# \* Together with Case No. 88, Salich v. United States.

## CLERK'S COPY.

#### Vol. I

Solgon et

#### TRANSCRIPT OF RECORD

# Supreme Court of the United States OCTOBER TERM, 1940

No. 87

MIKHAIL NICHOLAS GORIN, PETITIONER,

THE UNITED STATES OF AMERICA

No. 88

HAFIS SALICH, PETITIONER,

V8.

THE UNITED STATES OF AMERICA

ON WHITE OF CERTIORARI TO THE UNITED STATES CHEOUT COURT OF APPRALS FOR THE MINTH CHOUIT.

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CERTINEARY GRANTED JUNE 2, 1916.

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#### United States

#### Circuit Court of Appeals

For the Rinth Circuit.

No. 9135

MIKHAIL NICHOLAS GORIN,

Appellant,

VS.

THE UNITED STATES OF AMERICA,

Appellee.

No. 9136

HAFIS SALICH,

Appellant,

VS.

THE UNITED STATES OF AMERICA,
Appellee.

## Transcript of Record

#### **VOLUME I**

Pages 1 to 328

Upon Appeals from the District Court of the United States for the Southern District of California, Central Division.

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#### INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Page

Appeal:	
Bond on	
Designation of contents of record on (Defendant Gorin)	
Designation of contents of record on (Defendant Salich)	70
Notice of (Defendant Gorin)	.!
Notice of (Defendant Salich)	4
Statement of points on (Defendant Gorin)	6
Statement of points on (Defendant Salich)	74
Arraignment and Pleas of Defendants, (Minutes of January 16, 1939)	,
Assignment of Errors (Defendant Gorin) Order re	
Assignment of Errors (Defendant Salich)	
Stipulation and Order re	
Attorneys, Names & Addresses of	

Bill	Index I of Exceptions	age 68
0 1	Exhibits for Defendants Gorin:	
7.	A. (Identification) Article entitled	•
	"Exposing the peril at Panama" in	
	issue of April 7th of the magazine	
	- "Ken"	485
	Exhibits for Defendant Salich:	
17	A. Property agreement dated 11/8/38	
	between Hafis Salich and Velma I.	
	Salich [Not set out]	
	B, Report #1116 being a portion of	
	U. S. Exhibit 5 for Identification	357
	Exhibits for the Government:	
	1. Stipulation as to certain facts re	
4	citizenship of defendants Gorin	89
8	2. Stipulation pertaining to immigra-	
203	tion and naturalization files	0
100	(Balance of)	
A.	3. Sheet of paper with red notation	
	"R-2896" thereon; re George Ohashi	1 01
33	of San Diego, etc.	295
	4. Ten pages of longhand notes of G.	
	V. Dierst made of statement of Hafis	
AL.	Salich, 12-10-1938	168
		100
684	5. (Identification) Manila folder con-	
	taining 23 yellow onionskin sheets of paper marked on cover "Volume 2":	
	5(a) Report #833 being part of	0
	U. S. Exhibit 5—Identifica-	050
	tion	209

6(g) Report #534

#### Mikhail Nicholas Gorin et al.

	Index	Page
Exh	ibits for the Government (cont'd):	
	6(h) Report #532	277
	6(i) Report #530	277
	6(j) Paragraph #1 of Report 529	278
	6(k) Report #528	278.
:	6(1) Report #525	
4	6(m) Report #519	280
•	6(n) Report #514	280
	6(o) Report, #507	281
	6(p) Report #505	284
	6(q) Report #504	
*	6(r). Report #503	285
	6(s) Report #495	287
3	6(t) Report #489	288
	6(u) Report #482	289
	6(v) Report #480	289
	6(w) Report #479	
	6(x) Report #477	291
	6(y) Report #472	291
	6(z) Report #469	
	6(aa) Report #466	292
	6(bb) Report #465	293
	6(cc) Report #639	293
	6(dd) Report #435	294

#### vs. United States of America

Index	Page
Exhibits for the Government (cont'd):	
7. Four page typewritten statement of Hafis Salich dated 12/11/38	
8. Letter dated 8/10/36 to Hafis Salich	
from George H. Brereton	367
Instructions to jury	385
Motion of defendant Gorin for directed verdiet 317	384
Order denying322	384
Motion of defendant Salich for directed verdict 322,  Order denying 324,	
Order denying 324.	385
Motion of defendant Gorin in arrest of judgment	
Motion of defendant Gorin for new trial	464
Motion of defendant Salich for judgment notwithstanding verdict or for a new trial	
Order extending time within which to pre- pare, settle and file Bill of Exceptions, etc.	
Order extending time within which to pre- pare, serve and file transcript, assign-	
ment of errors and bill of exceptions	
Order settling bill of exceptions	
Stipulation and order consolidating appeals 4	181

tions	
Stipulation re omission in printed tr script of captions	an-
Witnesses for defendants:	No.
Bryson, Olga Louise  —direct ——cross ——	
Salich, Hafis —direct	0
-cross	
—redirêct	
—cross	
-recross	
Salich, Velma I.  —direct —cros	
-direct	*******
-cros	*******
Vollmer, August	
—direct	*****
Vitnesses for Government:	·j
Claiborne, H. deB.	
-direct	
-cross	
—recaned, direct	

0

vs. United States of America	vii
Index	Page
Witnesses for Government (cont'd):	ru .
Dierst, G. V.	
—direct	145
V4 V00	192
-recalled, direct	239
—cross	240
-redirect	241
-recross ;	242
Fredericks, Isabel	
	04
—cross	05
—cross — t	96
Hanna, Roy	90
	96
cross (by Mr. Stone)	108
Hanson, John H.	
-direct	196
—cross	203
Jones, J. J.	
—direct	86
—cross	88
Leonard, Denton	00
Atmost	
—cross	
-redirect	
	84
Maxwell, William S.	
-direct	204
-recalled, cross	. 316

viii	Mikhail Nicholas Gorin et al.	•
111 C	Index	Page
· V	Vitnesses for Government (cont'd):	
	McCloud, L. V.	
	direct	71
	-cross.	75
N.	Nelson, Alice A.	)
1	direct	76
•	—cross	80
0.0	Sackheim, Ann	
	(Stipulations re)	145
		te e
.00	Stanley, H. L.  —direct	127
	cross (by Mr. Stone)	141
	aross (by Mr. Pacht)	142
		143
A 1 4 3 4	recross	144
	—recalled, cross	313
	The second of th	
1286	Wilson, R. E.  —direct	
	Tilles M	
11.00	5 No. 4 TO HELD NO. 10 TO	222
	recalled, direct	modern and to
· · · · ·	oroge	
	redirect	257
	-recross	258
	—redirect ————————————————————————————————————	258
	-recalled, recross	306
	arose (by Mr. Pacht)	11.
	-redirect	120
	-redirect -recross (by Mr. Stone)	122
	recross (by Mr. Pacht)	126

Lys. United States of America	ix
Index P	
Bond, Bail, on Appeal, of Defendant Gorin	-58
Clerk's Certificate	66
Demand for Bill of Particulars by Defendant Gorin	
Demurrer and Motion of Defendants Gorin to Quash Indictment	
Demurrer and Motion to Quash Indictment of Defendant Salich	9
Designation of contents of Pecord on Appeal (Defendant Gorin)	699
Designation of contents of record on Appeal (Defendant Salich)	
Further trial (minutes of March 10, 1939)	30
Indictment	2
Hearing motion of Defendant Gorin for arrest of Judgment and new trial (Minutes of March 20, 1939)	
Judgment and Sentence (Defendant Gorin)	
Judgment and Sentence (Defendant Salich)	
Motions for stay of execution of judgment and for order for bail	
Order overruling motion for stay of execu-	39
Notice by Defendant Salich of Election to com- mence sentence	62
Notice of Appeal of Defenda, Gorin	. 55

	Page
Notice of Appeal of Defendant Salich	40
Notice of Motion for Bill of Particulars, Defendants Gorin	23
Notice of Motion for Bill of Particulars, Defendant Salich	25
	39
Order of Judge Wilbur re assignment of errors of Gorin	629
Order of Judge Wilbur, Reassignment of Errors of Salich	
Praecipe for Transcript of Record on Appeal	
Sentence and Judgment, Defendant Gorin	35
Sentence and Judgment, Defendant Salich	37
Statement of points upon Appeal (Defendant Gorir.)	
Statement of points upon Appeal (Defendant Salich)	
Stipulation and Order in lieu of Bill of Particulars	.27
Stipulation re Assignment of Errors of Defend- ant Salich and Order of Judge Wilbur thereon	
Stepulation re Forwarding Original Exhibits	63
Testimony (For detailed index see "Bill of Exceptions")	68
Verdicts of Jury	32

vs. United States of America.	xi
	Page
Proceedings in U. S. C. C. A., Ninth Circuit	707
Order granting leave to file additional assign-	. 0
ments of error	709
Order of submission	709
Order directing filing of opinion and judgments	710
Opinion, Haney, J.	710
Judgment in case of Gorin vs. U.S.	736
Clerk's certificate	737
Judgment in case of Salich vs. U. S.	738
Orders allowing certiorari	730

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Los Angeles, California. [1\*]

<sup>\*</sup>Page numbering appearing at the foot of page of original certified Transcript of Record.

#### INDICTMENT

No. 13793-RJ

Viol: Title 50, Sections 31, 32 and 34, United States Code.

In The District Court of the United States in and for the Southern District of California, Central Division.

At a stated term of said Court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Central Division of the Southern District of California on the second Monday of September in the year of our Lord one thousand nine hundred thirty-eight.

The grand jurors for the United States of America, impaneled and sworn in the Central Division of the Southern District of California, and inquiring for the Southern District of California, upon their oath present:

That

HAFIS SALICH,
MIKHAIL NICHOLAS GORIN, and
NATASHA GORIN,

hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 15th day of September, 1937, at Los Angeles, County of Los Angeles, state, division and district aforesaid, and within the juris-

diction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously, for the purpose of obtaining information respecting the national defense with intent and reasen to believe that the information to be obtained was to be used to the injury of the United States and to the advantage of a foreign nation, to-wit: the Union of Soviet Socialist Republics did then and there copy, take, make and obtain and attempt and induce, aid, counsel and abet each other and other persons to the grand jurors unknown to copy, take, make and obtain instruments, [2] documents, writings and notes of matters connected with the national defense, to-wit confidential information, reports, instruments, documents and writings pertaining to and concerning various and numerous individuals under suspicion, observation, surveillance and investigation, belonging and contained in the United States Naval Intelligence files and reports at San Pedro, California, bearing identification Naval Intelligence Report numbers as follows: 435, 439, 465, 466, 469, 472, 477, 478, 479, 480, 482. 487, 489, 495, 503, 504, 505, 507, 514, 519, 522, 525, 528, 529, 530, 532, 534, 535, 536, 541, 546, 551, 552, 554, 555, 548, 547, 540, 556, 557, 558, 559, 560, 565, 570, 665, 666, 833, 841, 849, 854, 859, 861, 889, 897, 967, 1081, 1066, 1088, 1104, 1110, 1116, 1129, 1130, 1132, 1133, 1139, 1145, 1152;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [3]

#### Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin, hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: on or about the 15th day of September, 1937, at Los Angeles, County of · Los Angeles, state, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully and feloniously, with intent and reason to believe that it was to be used to the injury of the United States and to the advantage of a foreign nation, to-wit: the Union of Soviet Socialist Republics, communicate, deliver and transmit and attempt to communicate, deliver and transmit, and aid, assist and induce each other and other persons to the grand jurors unknown, to communicate, deliver and transmit to a representative, officer, agent, employee, subject and citizen of the said Union of Soviet Socialist Republics, to-wit: the said Mikhail Nicholas Gorin and other persons to the grand jurors unknown, various documents, writings, notes, instruments and information relating to the national defense, to-wit: the confidential reports of the investigators of said United States Naval Intelligence located in the office of the United

States Naval Intelligence at San Pedro, California, and pertaining to and concerning various and numerous individuals who have been and are under suspicion, observation, surveillance and investigation by said Naval Intelligence, and bearing identification Naval Intelligence Report numbers as follows: 435, 439, 465, 466, 469, 472, 477, 478, 479, 480, 482, 487, 489, 495, 503, 504, 505, 507, 514, 519, 522, 525, 528, 529, 530, 532, 534, 535, 536, 541, 546, 551, 552, 554, 555, 548, 547, 540, 556, 557, 558, 559, 560, 565, 570, 665, 666, 833, 841, 849, 854, 859, [4] 861, 889, 897, 967, 1081, 1066, 1088, 1104, 1110, 1116, 1129, 1130, 1132, 1139, 1145, 1152, 1133;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America, [5]

#### Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin, hereinafter called the defendants, whose full and true names are, and the full and true name of each of whom is, other than as herein stated, to the grand jurors unknown, each late of the Central Division of the Southern District of California, heretofore, to-wit: prior to the dates of the commission of the overt acts hereinafter set forth, and continuously thereafter down to and including the date of filing of this indictment, in the County of Los Angeles, state, division and district afore-

said, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate and agree together and with each other and with divers other persons whose names are to the grand jurors unknown, to commit an offense against the United States of America by knowingly, wilfully and unlawfully, with intent and reason to believe that it was to be used to the injury of the United States and to the advantage of a foreign nation, to-wit: the Union of Soviet Socialist Republics, communicate, deliver, transmit and attempt to communicate, deliver and transmit to foreign government, to-wit: Union of Soviet Socialist Republics, and to a representative, officer, agent, employee, subject and citizen thereof, to-wit: the said Mikhail Nicholas Gorin, and to other persons to the grand jurors unknown, directly and indirectly, documents, writings, plans, notes, instruments and information relating to the national defense, to-wit: confidential reports, instruments, documents and writings contained in the files of the United States Naval Intelligence at San Pedro, California:

And the grand jurors aforesaid, upon their eath aforesaid, do further charge and present that at the hereinafter stated times, in pursuance of, and in furtherance of, in execution of, and for the purpose [6] of carrying out and to effect the object, design, and purposes of said conspiracy, combination, confederation and agreement aforesaid, the hereinafter named defendants did commit the following overt acts at the hereinafter stated places:

- 1. On or about August 15, 1936, defendant Hafis Salich was employed as a member of the United States Naval Intelligence at San Pedro, California;
- 2. On or about September 15, 1937, defendant Mikhail Nicholas Gorin called at the house of Hafis Salich at number 3333 West Fourth Street, Los Angeles, California;
- 3. In the Fall of 1935, defendant Hafis Salich was introduced to Nicholai Aliavdin, a Vice Consul for the Union of Soviet Socialist Republics, by O. R. Griffin, at Berkeley, California;
- 4. In December, 1937, defendant Mikhail Nicholas Gorin met the defendant Hafis Salich and produced a letter of introduction from Nicholai Aliavdin to defendant Hafis Salich;
- 5. In February 1938, defendant Mikhail Nicholas Gorin advanced to defendant Hafis Salich the sum of Two Hundred Dollars (\$200.00);
- 6. In February or March, 1938, defendant Hafis Salich and H. L. Stanley were working together for the United States Naval Intelligence and defendant Hafis Salich told H. L. Stanley that he had been out to dinner with a Russian friend of Hafis Salich by the name of Gorin and he (Gorin) had given Hafis Salich a proposition to turn over to Gorin certain information which was then being developed by Hafis Salich and H. L. Stanley in their investigations;
- 7. In February or March, 1938, defendant Hafis Salich proposed to H. L. Stanley that Hafis Salich and H. L. Stanley turn over to defendant Mikhail

Nicholas Gorin certain confidential information and reports and that Mikhail Nicholas Gorin would pay them the sum of \$30.00 or \$40.00 per month for the same; [7]

- 8. On or about September 30, 1938, the defendant Natasha Gorin had in her possession information and reports concerning one Harry M. Shively obtained from the files and reports of the office of the Naval Intelligence at San Pedro, California;
- 9. In July 1937, defendant Hafis Salich called upon and talked to defendant Mikhail Nicholas Gorin at his place of residence at 451 South Ardmore Street, Los Angeles, California;
- 10. In December 1938, defendant Mikhail Nicholas Gorin paid to defendant Hafis Salich the sum of \$200.00 in currency;

Contrary to the form of the statute in such casemade and provided and against the peace and dignity of the United States of America.

BEN HARRISON,
United States Attorney,
LEO V. SILVERSTEIN,
Assistant United States
Attorney. [8]

A true bill.

W. C. BINFORD.

Bail, \$1000—Natasha Gorin 25,000—ea. Salich & M. Gorin

[Endorsed]: Filed Jan. 11, 1939. [9]

#### [Title of District Court and Cause.]

#### A DEMURRER AND MOTION TO QUASH INDICTMENT

To the Honorable United States District Court in and for the Southern District of California, Central Division:

Now comes the defendant, Hafis Salich, by his attorney, Willard J. Stone, Jr., severing himself from his co-defendant, and for himself alone, and does make and present this, his demurrer and exceptions to the said indictment and motion to quash the same, and says that the indictment is insufficient in law and should be quashed and for grounds respectfully shows the Court:

- (1) The said indictment and each count thereof, fails to state facts sufficient to constitute an offense against the United States.
- (2) The indictment and each count, thereof, fails to set forth the facts which constitute the alleged offense so distinctly as to advise the accused of the charge which they have to meet and give them a fair opportunity to prepare their defense.
- (3) The indictment and each count thereof, is indefinite, uncertain, and insufficient in law, in that it does not state or specify:
- (a) What instruments, or documents, or writings, or notes the said defendants are alleged to have copied, or taken, or made, or obtained, or attempted, or induced, or aided, or counselled, or abetted each other, to copy, etc.?

- . (b) What documents, or writings, or notes, or instruments, or information the said defendants are alleged to have [10] communicated, or delivered, or transmitted, or attempted to communicate, or deliver, or transmit, or aid, or assist, or induce each other to communicate, etc.?
- (c) Facts showing that the instruments and information therein referred to are so immediately and directly connected with the defense of the United States by its armed forces that the disclosure of said instruments or information would immediately and directly endanger that defense.
- (d) Facts showing that the disclosure of the information and instruments therein referred to would be to the military injury and disadvantage of the United States in relation to the Union of Soviet Socialist Republics, and to the military advantage of the Union of Soviet Socialist Republics in relation to the United States.

Wherefore, for each and all of the foregoing objections, exceptions, and demurrers, this defendant moves the Court to sustain the same, and quash and set aside the indictment cited against them herein, and that they be permitted to go hence without day.

WILLARD J. STONE, JR., Attorney for Defendant, Hafis Salich.

I hereby certify that the above demurrer and motion to quash the indictment is filed in good faith and not for the purpose of delay, and that in

my opinion, the same is good and meritorious in law.

WILLARD J. STONE, JR., Attorney for Defendant, Hafis Stalich.

[Endorsed]: Filed Jan. 14, 1939. [11]

[Title of District Court and Cause.]

DEMURRER AND MOTION ON BEHALF OF DEFENDANTS MIKHAIL NICHOLAS GOR-IN AND NATASHA GORIN TO QUASH INDICTMENT RETURNED JANUARY 11, 1939.

Now come the defendants Mikhail Nicholas Gorin and Natasha Gorin, and separately and severally demur to that certain indictment heretofore returned against them on the 11th day of January, 1939, and move to quash the same, and each and every count thereof, upon the following grounds and for the following reasons:

### I. Demurrer To First Count.

- 1. That count one of said indictment does not state facts sufficient to constitute an offense against said defendants, or either of them.
- 2. That count one of said indictment does not state facts sufficient to constitute an offense for the violation of Section 31, Title 18, U.S.C.A.

- 3. That count one of said indictment is so vague, indefinite and uncertain in its averment, "for the purpose of [12] obtaining information respecting the national defense," as not to inform said defendants, or either of them, as to the nature and cause of the accusation.
- 4. That count one of said indictment is vague, indefinite and uncertain in its averment, "confidential information, reports, instruments, documents and writings pertaining to and concerning various and numerous individuals under suspicion, observation, surveillance and investigation, belonging and contained in the United States Naval Intelligence files and reports at San Pedro, California, bearing identification Naval Intelligence Report numbers as follows: 435 . . . . etc., as not to inform said defendants, or either of them precisely what information or reports or instruments or documents or writings are referred to therein, or the nature or character thereof, and also as not to inform said defendants or either of them, as to the nature and cause of the accusation.
- 5. That count one of said indictment is so vague, indefinite and uncertain in its averment, that it cannot be ascertained in what manner the information, reports, instruments, documents and writings therein referred to are connected with the national defense.
- 6. That count one of said indictment is so vague, indefinite and uncertain in its averment, that it cannot be ascertained in what manner or how, in any way, the "confidential information, reports, in-

struments, documents and writings pertaining to and concerning various and numerous individuals under suspicion, observation, surveillance and investigation, belonging and contained in the United States Naval Intelligence files and reports at San Pedro, California," are connected with the national defense. [13].

- 7. That count one of said indictment is attempted to be based upon a statute so indefinite, vague, uncertain and ambiguous as not to enable said defendants, or either of them, to know what is forbidden by it, and therefore amounts to an attempted delegation by Congress of legislative power to courts and juries to determine what acts should be held to be criminal and punishable under said statute, and that said statute is therefore void and invalid.
- 8. That count one of said indictment is bad for duplicity, in that the setting up of more than one offense in a sinlge count does not enable said defendants, or either of them, to deal intelligently with the charge, and seriously handicaps them in making their defense, and is likely to prevent them, and each of them, from pleading former acquittal or conviction.
- 9. That count one of said indictment is vague, indefinite and uncertain, in that there is no definition contained in the indictment or in the statute upon which the indictment is based defining "national defense" as used therein.

10. That count one of said indictment violates the provisions of the Fifth and Sixth Amendments to the United States Constitution.

#### II.

#### Demurrer to Second Count.

- 1. That count two of said indictment does not state facts sufficient to constitute an offense against said defendants or either of them. [14]
- 2. That count two of said indictment does not state facts sufficient to constitute an offense for the violation of Section 32, Title 18, U.S.C.
- 3. That count two of said indictment is so vague, indefinite and uncertain in its averment, "various documents, writings, notes, instruments and information relating to the national defense," as not to inform said defendants, or either, of them, as to the nature and cause of the accusation.
- 4. That count two of said indictment is so vague, indefinite and uncertain in its averment, "the confidential reports of the investigators of said United States Naval Intelligence located in the office of the United States Naval Intelligence, at San Pedro, California, and pertaining to and concerning various and numerous individuals who have been and are under suspicion, observation, surveillance and investigation by said Naval Intelligence, and bearing identification Naval Intelligence Report numbers as follows: 435 . . . . . ", etc., as not to inform said defendants, or either of them, precisely what information or writings are referred to therein, or the nature or character thereof, and also as not

to inform said defendants, or either of them, as to the nature and cause of the accusation.

- 5. That count two of said indictment is so vague, indefinite and uncertain in its averment that it cannot be ascertained in what manner the information, reports, instruments, documents and writings therein referred to are related with the national defense.
- 6. That count two of said indictment is so vague, indefinite and uncertain in its averment that it cannot be ascer- [15] tained in what manner or how, in any way, "the confidential reports of the investigators of said United States Naval Intelligence located in the office of the United States Naval Intelligence at San Pedro, California, and pertaining to and concerning various and numerous individuals who have been and are under suspicion, observation, surveillance and investigation" are connected with the national defense.
- 7. That count two of said indictment is attempted to be based upon a statute so indefinite, vague, uncertain and ambiguous as not to enable said defendants, or either of them, to know what is forbidden by it, and therefore amounts to an attempted delegation by Congress of legislative powers to courts and juries to determine what acts should be held criminal and punishable under said statute, and that said statute is therefore void and invalid.
- 8. That count two of said indictment is bad for duplicity, in that the setting up of more than one

offense in a single count does not enable said defendants, or either of them, to deal intelligently with the charge, and seriously handicaps them in making their defense, and is likely to prevent them, and each of them, from pleading former acquittal or conviction.

- 9. That count two of said indictment is vague, indefinite and uncertain, in that there is no definition contained in the indictment or in the statute upon which the indictment is based defining "national defense" as used therein.
- 10. That count two of said indictment violates the provisions of the Fifth and Sixth Amendments to the United States Constitution. [16]

#### III.

#### Demurrer To Third Count.

- 1. That count three of said indictment does not state facts sufficient to constitute an offense against said defendants, or either of them.
- That count three of said indictment does not state facts sufficient to constitute an offense for the violation of Section 34, Title 18, U.S.C.
- 3. That count three of said indictment is so vague, indefinite and uncertain in its averment, "documents, writings, plans, notes, instruments and information relating to the national defense", as not to inform said defendants, or either of them, as to the nature and cause of the accusation.
- 4. That count three of said indictment is so vague, indefinite and uncertain in its averment,

"confidential reports, instruments, documents and writings contained in the files of the United States Naval Intelligence at San Pedro, California", as not to inform said defendants, or either of them, precisely what reports, instruments, documents or writings are referred to therein, or the nature or character thereof, and also as not to inform said defendants, or either of them, as to the nature and cause of the accusation.

- 5. That count three of said indictment is so vague, indefinite and uncertain in its averment that it cannot be ascertained in what manner the documents, writings, plans, notes, instruments and information therein referred to are related to the national defense. [17]
- 6. That count three of said indictment is attempted to be based upon a statute so indefinite, vague, uncertain and ambiguous as not to enable said defendants, or either of them, to know what is forbidden by it, and therefore amounts to an attempted delegation by Congress of legislative power to courts and juries to determine what acts should be held to be criminal and punishable under said statute, and that said statute is therefore void and invalid.
- 7. That count three of said indictment is bad for duplicity, in that the setting up of more than one offense in a single count does not enable said defendants, or either of them, to deal intelligently with the charge, and seriously handicaps them in making their defense, and is likely to prevent them,

and each of them, from pleading former acquittal . or conviction.

- 8. That count three of said indictment is vague, indefinite and uncertain, in that there is no definition contained in the indictment or in the statute upon which the indictment is based defining "national defense" as used therein.
- 9. That count three of said indictment violates the provisions of the Fifth and Sixth Amendments to the United States Constitution.

Wherefore, said defendants, and each of them, pray for an order sustaining said démurrer, and granting the motion to quash said indictment, and that their bond be exonerated, and that they go hence without day.

## PACHT, PELTON, WARNE & BLACK, By CLORE WARNE,

Attorneys for defendants
Mikhail Nicholas Gorin and
Natasha Gorin, 510 Union
Bank Building, 325 West
Eighth Street, Los Angeles,
California. [18]

I hereby certify that the foregoing demurrer is taken in good faith, and not for the purposes of delay, and in my opinion, the same is well taken in law.

#### CLORE WARNE, Of Pacht, Pelton, Warne &

. Black.

[Endorsed]: Filed Jan. 16, 1939. [19]

At a stated term, to wit: The September Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 16th day of January in the year of our Lord one thousand nine hundred and thirty-nine.

#### Present:

The Honorable Ralph E. Jenney, District Judge.

[Title of Cause.]

This cause coming on for (1) arraignment and plea; Ben Harrison, U. S. Attorney, and N. W. Neukom, Assistant U. S. Attorney, appearing for the Government; at 10 o'clock A.M., Defendant Hafis Salich only being present, it is ordered that this cause be hereby continued to 200'clock P.M.

At 2 o'clock P.M. Court reconvenes herein, and the afore-mentioned counsel for the Government being present, and Williard Stone, Esq., appearing for the Defendant Hafis Salich, and Clore Warne, Esq., appearing for Defendants Mikhail Nicholas Gorin and Natasha Gorin, all of the said defendants being present;

And, this cause also coming on for (2) hearing on demurrer and motion to quash indictment filed by Defendant Salich, and (3) for hearing on demurrer and motion to quash indictment filed by Defendants Mikhail Nicholas Gorin and Natasha Gorin, — It is stipulated and ordered that the

demurrers and motions to quash as to the second indictment are the matters to be presented at this time.

At 2:05 o'clock P.M. Attorney Warne argues to the Court in support of demurrer and motion to quash in behalf of Defendants Mikhail Nicholas Gorin and Natasha Gorin.

At 3 o'clock P.M. Attorney Stone argues to the Court in support of the demurrer and motion to quash in behalf of Defendant Hafis Salich.

At 3:35 o'clock P.M. Court recesses. At 3:45 o'clock P.M. Court reconvenes, and all being present as before, including the defendants.

The Court makes a statement and it is ordered that the demurrers be, and [20] they hereby are, overruled, and that the motions to quash be and they hereby are denied.

It is stipulated and ordered that the bond deposited by defendant M. N. Gorin in Case No. 13,769-RJ may be deemed to be on deposit in this case and for all purposes the defendant be bound by the same conditions as upon the cash bail deposit made upon the indictment in Case No. 13,769-RJ.

It is ordered that the United States Attorney prepare a written order for the signature of the Court, after having same approved by counsel for the said defendant.

Each defendant states his or her name to be as given in the Indictment and each defendant enters

his or her separate plea of not guilty to each count of the Indictment.

It is ordered that this cause be set for trial for February 21, 1939.

Counsel present and there is signed a stipulation, and order permitting the defendant, M. N. Gorin, to leave the jurisdiction of this Court to go to New York and Washington, D.C. [21]

#### [Title of District Court and Cause.]

#### DEMAND FOR BILL OF PARTICULARS

Come now the defendants, Mikhail Nicholas Gorin and Natasha Gorin, and severally demand a bill of particulars, failing which the said defendants will apply to the court for an order directing the United States Attorney to furnish to the above named defendants a bill of particulars of the acts, facts, and things specified in the indictment in the above entitled cause, particularly setting forth the following:

(1) A more detailed account and specification setting out how the instruments, documents, writings, etc. contained in files Nos. 435, 439, 465, 466, 469, 472, 477, 478, 479, 480, 482, 487, 489, 495, 503, 504, 505, 507, 514, 519, 522, 525, 528, 529, 530, 532, 534, 535, 536, 541, 546, 551, 552, 554, 555, 548, 547, 540, 556, 557, 558, 559, 560, 565, 570, 665, 666, 833, 841, 849, 854, 859, 861, 889, 897, 967, 1081, 1066, 1088, 1104, 1110, 1116, 1129, 1130, 1132, 1133, 1139, 1145, 1152, were connected with or related to the national defense.

- (2) A more detailed account of the nature and character of the information contained in said files above listed, or preferably, copies of reports contained in such files.
- (3) A more detailed account of the information or a summary thereof contained in said files above listed, and each of [22] said files, or a summary of the information contained therein sufficient to acquaint defendants with the nature of such information.

Dated: January 27, 1939.

PACHT, PELTON, WARNE & BLACK,
By ISAAC PACHT,
ISAAC PACHT,

Attorneys for defendants Gorin, 510 Union Bank Building, 325 West Eighth Street, Los Angeles, California.

[Endorsed]: Served. Filed Jan. 27, 1939. [23]

[Title of District Court and Cause.]

AFFIDAVIT FOR NOTICE OF MOTION

United States of America, State of California, County of Los Angeles—ss.

Mikhail Nicholas Gorin and Natasha Gorin, being each first duly sworn, on oath say: that they have read the foregoing notice of motion for bill of particulars and know the contents thereof, and that they are advised by their counsel; after full disclosure of all the facts involved, and they verily believe the fact to be that the cannot safely go to trial on the above indictment without knowledge of the details and particulars of the matters requested in the foregoing demand for bill of particulars.

# MIKHAIL N. GORIN, NATASHA GORIN.

Subscribed and sworn to before me this 27 day of January, 1939.

[Seal] ELLA M. LEVIN,

Notary Public in and for said County and State.

My Commission Expires October 28, 1942.

[Endorsed]: Filed Jan. 27, 1939. [25]

[Title of District Court and Cause.]

# NOTICE OF MOTION FOR BILL OF 5 PARTICULARS

To Ben Harrison, Esq., United States Attorney:

Please Take Notice that upon the verified petition of Mikhail Nicholas Gorin and Natasha Gorin, petitioners, duly verified the 27th day of January, 1939, and upon all other papers filed in the above entitled action to date, upon the indictment found against the defendants, and upon all the proceed-

ings heretofore had herein, a motion will be made at a term of this court, held in Room No. ......., Pacific Electric Building, in the City of Los Angeles, County of Los Angeles, State of California, on the 13th day of February, 1939, at the opening of court on that day or as soon thereafter as counsel can be heard, for an order directing the United States Attorney to serve and file a bill of particulars of the above described indictment, particularly setting for the following:

- (1) A more detailed account and specification setting out how the instruments, documents, writings, etc. contained in files Nos. 435, 439, 465, 466, 469, 472, 477, 478, 479, 480, 482, 487, 489, 495, 503, 504, 505, 507, 514, 519, 522, 525, 528, 529, 530, 532, 534, 535, 536, 541, 546, 551, 552, 554, 555, 548, 547, 540, 556, 557, 558, 559, 560, 565, 570, 665, 666, 833, 841, 849, 854, 859, 861, 889, 897, 967, 1081, 1066, 1088, 1104, 1110, 1116, 1129, [27] 1130, 1132, 1133, 1139, 1145, 1152, were connected with or related to the national defense.
- (2) A more detailed account of the nature and character of the information contained in said files above listed, or preferably, copies of reports contained in such files.
- (3) A more detailed account of the information or a summary thereof contained in said files above listed, and each of said files, or a summary of the information contained therein sufficient to acquaint defendants with the nature of such information.

And for such other and further relief as the Court may deem just and proper.

Dated January 27, 1939.

PACHT, PELTON, WARNE & BLACK By ISAAC PACHT ISAAC PACHT

Attorneys for defendants Gorin
510 Union Bank Building
325 West Eighth Street
Los Angeles, California

[Endorsed]: Filed Jan. 27, 1939. [28]

# [Title of District Court and Cause.]

# NOTICE OF MOTION FOR BILL OF PARTICULARS

To Ben Harrison, Esquire, United States Attorney:
Please take notice that the defendant Hafis Salich, severing himself from his co-defendants and for himself alone, by Willard J. Stone, Jr., his attorney of record, will move this Court at a stated term thereof, to be held in the City of Los Angeles on the 13th day of February, 1939, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order requiring the United States to furnish a Bill of Particulars as to the following items:

(1) In what manner and in which respects does the Government claim the disclosure of the infor-

mation, alleged to have been obtained and disclosed by the defendant Hafis Salich, affects the national defense?

- (2) The names and identity of the individuals under the surveillance of the United States Naval Intelligence Service, reports of which were alleged to have been obtained and disclosed by the defendant Hafis Salich.
- (3) The cause and character of the surveillance and investigation of said individuals, reports of which are alleged to have been obtained and disclosed by the defendant Hafis Salich.
- Intelligence files alleged to have been obtained and disclosed by the defendant [30] Hafis Salich, and bearing United States Naval Intelligence file numbers as follows:

435, 439, 465, 466, 469, 472, 477, 478, 479, 480, 482, 487, 489, 495, 503, 504, 505, 507, 514, 519, 522, 525, 528, 529, 530, 532, 534, 535, 536, 541, 546, 551, 552, 554, 555, 548, 547, 540, 556, 557, 558, 559, 560, 565, 570, 665, 666, 833, 841, 849, 854, 859, 861, 889, 897, 967, 1081, 1066, 1088, 1152, 1104, 1110, 1116, 1129, 1230, 1132, 1133, 1139, 1145.

(5) What information and reports regarding one Harry Shively, the defendant Natasha Gorin is alleged in Count 3 of the indictment to have obtained and possessed?

(6) Does the Government claim that the said information and reports, in regard to the said Harry Shively, was obtained and disclosed to the said Natasha Gorin by the defendant Hafis Salich?

WILLARD J. STONE, Jr.

Attorney for defendant Hafis Salich.

[Endorsed]: Served Filed Feb. 4, 1939. [31]

# [Title of District Court and Cause.]

# STIPULATION IN LIEU OF BILL OF PARTICULARS AND ORDER

It is hereby stipulated by and between Ben Harrison, United States Attorney, and Norman W. Neukom, Assistant United States Attorney, on behalf of the Plaintiff, and Pacht, Pelton, Warne & Black, by Clore Warne, of counsel, attorneys for the defendants Mikhail Nicholas Gorin and Natasha Gorin; and Willard J. Stone, Jr., attorney for Hafis Salich, defendant, as follows:

Whereas, upon this 13th day of February, 1939, there was presented to and argued before the Honorable Ralph E. Jenney certain motions for bill of particulars in connection with the above captioned case; and whereas today, subsequent to said argument, the court did make its order requiring the government to provide information designated as Item 3 on page 2 of the Notice of Motion for Bill of Particulars filed by the defendants Mikhail

Nicholas Gorin and Natasha Gorin and did make a similar order with respect to requiring the government to provide the information designated as Item 3 in the Notice of Motion for Bill of Particulars filed by the defendant Hafis Salich; and

Whereas, subsequent to the making of said argument, the parties through their respective counsel have come to an agreement, hereinafter to be set forth in this stipulation, and whereas, said agreement is as follows:

That the government shall provide to be inspected at the [32] office of the United States Attorney the photostatic copies of the original reports designated by number in the indictment upon the understanding that the defendants, through their counsel, may make a summary or take information from each of said reports as they so desire, which said summary shall not be made public; and with the further understanding that it is the agreement that in the event any of the persons mentioned in said reports are desired to be contacted by the defendants in connection with the preparation of trial of this action, they shall first give notice of such desire to the United States Attorney's Office, with the understanding that if any of such individuals are contacted personally or by letter an opportunity shall be had for a representative of the United States government to accompany any party making such interview and be present during the whole of

any such interview; and with the further understanding that it is agreeable to all parties hereto the government need not comply with the order of the court respecting the giving of general information within twenty four (24) hours as is above designated.

Dated: February 13, 1939.

BEN HARRISON,

United States Attorney,

NORMAN W. NEUKOM,

Assistant U.S. Attorney,

Attorneys for Plaintiff.

PACHT, PELTON, WARNE & BLACK, By CLORE WARNE,

Attorneys for Mikhail Nicholas Gorin and Natasha Gorin.

WILLARD J. STONE, Jr.,

Attorney for Hafis Salich.

It is so ordered and the minute order hereofore made on [33] this 13th day of February, 1939, more specifically referred to in the foregoing stipulation, is nereby vacated and set aside.

Dated: February 13, 1939.

RALPH E. JENNEY,

United States District Judge.

[Endorsed]: Filed Feb. 13, 1939. [34]

At a stated term, to wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 10th day of March in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Ralph E. Jenney, District Judge.

# [Title of Cause.]

This cause coming on for further jury trial of defendants Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin, who are present; Ben Harrison, U. S. Attorney, and N. W. Neukom, Assistant U. S. Attorney, appearing for the Government; Willard Stone, Esq., appearing for Defendant Salich; and Clore Warne and Isaac Pacht, Esq., appearing for Defendants Gorin; H. E. Snyder and A. Wahlberg being present as court reporters and reporting the proceedings; and the jury being present:

The case is re-opened, pursuant to stipulation and order of the Court, for the purpose of ruling on motion of Defendants Gorin to strike; and the said motion is granted in part and denied in part as reflected in reporters' transcript.

At 10 o'clock A. M. the Court instructs the jury.
At 10:50 o'clock A. M. the Court reminds the jury of the admonition heretofore given and declares a recess. At 11:08 o'clock A. M. Court re-

convenes, and the jury and the defendants being present, the Court instructs the jury further.

At 11:40 o'clock A. M. the Court reminds the jury of the admonition heretofore given. Richard Ransdell, James H. Denison, and G. C. Welch are sworn as bailiffs to care for the jury, and the jury are now excused in the custody of the said bailiffs until 2 o'clock P. M.

It is ordered that the jury and the alternate juror be taken to lunch in the custody of the two bailiffs at the expense of the Government.

At 11:50 o'clock A. M. Court recesses until 2 o'clock P. M. At 2:15 o'clock P. M. Court reconvenes, and the jury and the defendants being present, the Court instructs the jury further. [35]

At 2:35 o'clock P. M. the jury retires in custody of the three bailiffs to consider its verdict. It is stipulated and ordered that the jury may have the Indictment and exhibits for its consideration.

The alternate juror is thanked and discharged from this case and is excused for the term.

It is ordered that all the defendants remain in the Court room or within the immediate vicinity of the Court room until further order of the Court.

At 2:45 o'clock P. M. Court recesses until the return of the jury,

At 4:50 o'clock P. M. Court reconvenes, and the defendants and their counsel being present, and the counsel for the Government being present as before, the jury now return into the Court room.

Verdict of acquittal of Defendant Natasha Gorin and conviction of Defendant Mikhail Nicholas Gorin and Hafis Salich on all three counts is presented, read, and ordered filed and entered herein, to-wit:

[Title of District Court and Cause.]

#### VERDICT

We, the Jury in the above entitled cause, find the defendant Hasis Salich guilty as charged in the first count of the indictment, guilty as charged in the second count of the indictment, and guilty as charged in the third count of the indictment; find the defendant Mikhail Nicholas Gorin guilty as charged in the first count of the indictment, guilty as charged in the second count of the indictment, and guilty as charged in the third count of the indictment; and find the defendant Natasha Gorin not guilty as charged in the first count of the indictment, not guilty as charged in the second count of the indictment, and not guilty as charged in the third count of the indictment.

#### FRED M. COX.

Foreman of the Jury.

Los Angeles, Calif., March 10th, 1939.

[Endorsed]: Filed Mar. 10, 1939. [36].

It is ordered that Defendant Natasha Gorin be discharged and her bond exonerated.

It is ordered that the Defendants Mikhail Nicholas Gorin and Hafis Salich be, and they hereby are, remanded to the custody of the United States Marshal.

The jury is thanked and discharged from this case.

Clore Warne, Esq., moves the Court for release of Defendant Mikhail Nicholas Gorin on his present bond pending further proceedings. Ben Harrison, U. S. Attorney, opposes Attorney Warne's motion for release, unless the amount of bond of the said defendant is materially increased.

It is now ordered that this cause be, and it hereby is, continued to March 11, 1939, at 10 o'clock A. M. for further hearing on the motion for release of Defendant Mikhail Nicholas Gorin on bond, etc., and for fixing time for sentence of the convicted defendants, the order of remand to stand until that time. [37]

At a stated term, to wit: The February Term, A. D. 1939, of the District Cour of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 20th day of March in the year

of our Lord one thousand nine hundred and thirtynine.

Present:

The Honorable Ralph E. Jenney, District Judge.

[Title of Cause.]

This cause coming on for (1) hearing motion of Defendant Mikhail Nicholas Gorin for arrest of judgment; (2) hearing motion of Defendant Mikhail Nicholas Gorin for a new trial; (3) hearing motion of Defendant Hafis Salich for judgment notwithstanding the verdict or for a new trial; (4) for sentence of Defendants Hafis Salich and Mikhail Nieholas Gorin on all three counts; and (5) - further proceedings re bail of Defendant Hafis Salich; Ben Harrison, U. S. Attorney, and N. W. Neukom, Assistant U. S. Attorney, appearing for the Government; Willard Stone, Esq., appearing for Defendant Hafis Salich; and Clore Warne and Isaac Pacht, Esqs., appearing for Defendant Mikhail Nicholas Gorin; A. Wahlberg being present as court reporter and reporting the proceedings:

- Re (1) Motion of Defendant Mikhail Nicholas Gorin for arrest of judgment, Attorney Pacht makes the motion and argues in support of same; the said motion is ordered denied, and exception noted.
- Re (2) Motion of Defendant Mikhail Nicholas Gorin for a new trial, Attorney Pacht makes the motion and argues in support of same; the said motion is ordered denied, and exception noted.

Re (3) Motion of Defendant Hafis Salich for judgment notwithstanding the verdict or for a new trial, Attorney Stone makes the motion and argues in support of same; the said motion is ordered denied, and exception noted.

The Court now pronounces sentence upon each of the said defendants as follows:

District Court of the United States, Southern District of California, Central Division

No. 13,793-RJ Criminal Indictment in three counts for violation of U. S. C. Title 50, Secs. 31, 32, and 34.

#### UNITED STATES

V.

# MIKHAIL NICHOLAS GORIN [38]

#### JUDGMENT AND COMMITMENT

On this 20th day of March, 1939, came the United States Attorney, and the defendant Mikhail Nicholas Gorin appearing in proper person, and by Isaac Pacht and Clore Warne, Esqs., his attorneys, and,

The defendant having been convicted on verdict of guilty of the offenses charged in the indictment in the above entitled cause, to-wit: copy, take, make, and obtain instruments, documents, writings and notes of matters connected with the national defense; communicate, deliver, and transmit same to

a representative, officer, agent, employee, subject, and citizen of a foreign country; and conspiracy to do the same, with intent and reason to believe same was to be used to injury of U. S. A. and advantage of a foreign nation, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the penitentiary type to be designated by the Attorney General or his authorized representative for the period of six. (6) years on the third count of the indictment; for the period of six (6) years on the second count of the indictment, said term of imprisonment to begin and run concurrently with that imposed on count three of the indictment; and for a period of two (2) years and pay a fine unto the United States of America in the sum of ten thousand (\$10,000.00) dollars on the first count of the indictment, said term of imprisonment on the first count of the indictment to begin and run concurrently with the sentences imposed on counts two and three of the indictment, for said period of two vears.

It Is Further Ordered that Clerk deliver a certified copy of this judgment and commitment to the

United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

# RALPH E. JENNEY, Judge.

[Endorsed]: Filed, March 29, 1939. [39]

District Court of the United States, Southern District of California, Central Division.

No. 13,793-RJ Criminal Indictment in three counts for violation of U.S.C. Title 50, Secs. 31, 32 and 34.

#### UNITED STATES

V.

#### HAFIS SALICH

# JUDGMENT AND COMMITMENT

On this 20th day of March, 1939, came the United States Attorney, and the defendant Haus Salichappearing in proper person, and by Willard Stone, Esq., his attorney, and,

The defendant having been convicted on verdict of guilty of the offenses charged in the indictment in the above-entitled cause, to-wit: copy, take, make, and obtain instruments, documents, writings and notes of matters connected with the national defense; communicate, deliver, and transmit same to a representative, officer, agent, employee, subject, and citizen of a foreign country; and conspiracy

to do the same, with intent and reason to believe same was to be used to injury of U. S. A. and advantage of a foreign nation, and the defendant having been how asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, Is Is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the penitentiary type to be designated by the Attorney General or his authorized representative for the period of four (4) years on the third count of the indictment; for the period of four (4) years on the second count of the Indictment, said term of imprisonment to begin and run concurrently with that imposed on count three of the indictment; and for a period of two (2) years and pay a fine unto the United States of America in the sum of ten thousand (\$10,000.00) dollars on the first count of the indictment, said term of imprisonment on the first count of the indictment to begin and run concurrently with the sentences imposed on counts two and three of the indictment for said period of two (2) years.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

# RALPH E. JENNEY, Judge:

[Endorsed]: Filed March 20, 1939. [40]

Attorney Pacht moves for a stay of execution of the judgment imposed on Defendant Gorin for two days. The motion is ordered denied and the defendant Gorin remanded to custody.

Attorney Pacht moves for an order fixing bail of Defendant Gorin pending appeal which is ordered set at \$50,000.00, the Court stating that a substantial question of law is involved on the appeal.

Attorney Stone moves for an order fixing bail pending appeal on behalf of Defendant Salich, whereupon, it is ordered that the cause be, and it hereby is, continued to March 23, 1939, for further hearing on said motion.

It is further ordered that the defendant Hafis Salich remain in the County Jail until such time, as the Court takes further action on the motion fixing bail pending appeal. [11]

[Title of District Court and Cause.]

NOTICE OF APPEAL OF DEFENDANT
HAFIS SALICH.

Name and address of appellant: Hafis Salich, Los Angeles, California.

Name and address of appellant's attorney: Willard J. Stone, Jr., 1017 Citizens National Bank Building, Los Angeles, California.

Offense: Violation of Title 50 United States Code, Secs. 31, 32 and 34.

Date of judgment: March 20, 1939.

Brief description of judgment or sentence: On Count 3 appellant was sentenced to four years imprisonment in a penitentiary to be fixed by the Attorney General of the United States. On Count 2 appellant was sentenced to four years imprisonment in a penitentiary to be fixed by the Attorney General of the United States. On Count 1 appellant was sentenced to two years imprisonment in a penitentiary to be fixed by the Attorney General of the United States, and to pay a fine of Ten Thousand and no/100 Dollars (\$10,000.00). The terms of imprisonment are to run concurrently.

Name of prison where now confined, if not on bail:

Los Angeles County Jail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below. Dated March 21, 1939.

HAFIS SALICH,
Appellant.
WILLARD J. STONE, JR.,
Attorney for Appellant. [42]

# Grounds of Appeal

#### First Count

- (1) The Fir Count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.
- (2) The evidence introduced on behalf of the Government on the First Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.
- (3) The verdict is against the weight of the evidence.
- (4) The evidence introduced by the Government fails to show that the information obtained concerns or affects the national defense.
- (5) The evidence fails to show that the defendant Hafis Salich obtained the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (6) The evidence fails to show that the defendant Hafis Salich obtained the said information with

the purpose of obtaining information affecting the national defense.

- (7) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.
- (8) The Court erred in its definition of the term "affecting the national defense" in the instructions given to the jury.
- (9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "A" for identification.
- (10). The Court erred in admitting in evidence Government's Exhibit 5a. [43]
- ' (11) The Court erred in admitting in evidence Government's Exhibit 5b.
- (12) The Court erred in admitting in evidence Government's Exhibit 5c.
- (13) The Court erred in admitting in evidence Government's Exhibit 5d.
- (14) The Court erred in admitting in evidence Government's Exhibit 5e.
- (15) The Court erred in admitting in evidence Government's Exhibit 5f.
- (16) The Court erred in admitting in evidence Government's Exhibit 5g.
- (17) The Court erred in admitting in evidence Government's Exhibit 5h.
- (18) The Court erred in admitting in evidence Government's Exhibit 5i.

- (19) The Court erred in admitting in evidence Government's Exhibit 5j.
- (20) The Court erred in admitting in evidence Government's Exhibit 5k.
- (21) The Court erred in admitting in evidence Government's Exhibit 51.
- (22) The Court erred in admitting in evidence Government's Exhibit 5m.
- (23) The Court erred in admitting in evidence Government's Exhibit 6a.
- (24) The Courterred in admitting in evidence Government's Exhibit 6b.
- (25) The Court erred in admitting in evidence Government's Exhibit 6c.
- Government's Exhibit 6d. [44]
- Government's Exhibit 6e.
  - (28) The Court erred in admitting in evidence Government's Exhibit 6f.
- (29) The Court erred in admitting in evidence Government's Exhibit 6g.
- (30) The Court erred in admitting in evidence Government's Exhibit 6h.
- (31) The Court erred in admitting in evidence Government's Exhibit 6i.
- (32) The Court erred in admitting in evidence Government's Exhibit 6j.
- (33) The Court erred in admitting in evidence Government's Exhibit 6k.

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- (34) The Court erred in admitting in evidence Government's Exhibit 61.
- (35) The Court erred in admitting in evidence Government's Exhibit 6m.
- (36) The Court erred in admitting in evidence Government's Exhibit 6n.
- (37) The Court erred in admitting in evidence Government's Exhibit 60.
- (38) The Court erred in admitting in evidence Government's Exhibit 6p.
- (39) The Court erred in admitting in evidence Government's Exhibit 6q.
- (40). The Court erred in admitting in evidence Government's Exhibit 6r.
- (41) The Court erred in admitting in evidence Government's Exhibit 6s.
- (42) The Court erred in admitting in evidence Government's Exhibit 6t. [45]
- (43) The Court erred in admitting in evidence Government's Exhibit 6u.
- (44) The Court erred in admitting in evidence Government's Exhibit 6v.
- (45) The Court erred in admitting in evidence Government's Exhibit 6w.
- (46) The Court erred in admitting in evidence Government's Exhibit 6x:
- (47) The Court erred in admitting in evidence Government's Exhibit 6y.
- (48) The Capit erred in admiting in evidence Covernment's Exhibit 6z.

- . (49) The Court erred in admitting in evidence Government's Exhibit 6aa.
- Government's Exhibit 6bb.
- (51) The Court erred in admitting in evidence. Government's Exhibit 6cc.
- (52) The Court erred in admitting in evidence Government's Exhibit 6dd.
- (53) The Court erred in declining to give Instruction No. X requested on behalf of Hafts Salich.
- (54) The Court exred in declining to give Instruction No. XI requested on behalf of Hafis Salich.
- (55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.
- (56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri de B. Claiborne.
- (57) The Court erred in its definition of the term "with intent or reason to believe, etc." in the instructions given to the jury. [46]

#### Second Count

- (1) The Second Count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.
- (2) The evidence introduced on behalf of the Government on the Second Count of the indictment

is insufficient to support a conviction of the defendant Hafis Salich.

- (3) The verdict is against the weight of the evidence.
- (4) The evidence introduced by the Government fails to show that the information communicated and transmitted concerns or affects the national defense.
- (5) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (6) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with the purpose of communicating and transmitting information affecting the national defense.
- (7) The Court erred in denying the motion for of directed verdict presented on behalf of defendant Hafis Salich.
- (8) The Court erred in its definition of the term "affecting the national defense" in the instructions given to the jury.
- (9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "A" for identification.
- (10) The Court erred in admitting in evidence Government's Exhibit 5a.

- (11) The Court erred in admitting in evidence Government's Eshibit 5b.
- (12) The Court erred in admitting in evidence Government's Exhibit 5c. [47]
- (13) The Court erred in admitting in evidence Government's Exhibit 5d.
- (14) The Court erred in admitting in evidence Government's Exhibit 5e.
- (15) The Court erred in admitting in evidence Government's Exhibit 5f.
- (16) The Court erred in admitting in evidence Government's Exhibit 5g.
- (17) The Court erred in admitting in evidence Government's Exhibit 5h.
- (18) The Court erred in admitting in evidence Government's Exhibit 5i.
- (19) The Court erred in admitting in evidence Government's Exhibit 5j.
- (20) The Court erred in admitting in evidence Government's Exhibit 5k.
- (21) The Court erred in admitting in evidence Government's Exhibit 51.
- (22) The Court erred in admitting in evidence Government's Exhibit 5m.
- (23) The Court erred in admitting in evidence Government's Exhibit 6a.
- (24) The Court erred in admitting in evidence Government's Exhibit 6b.
- (25) The Court erred in admitting in evidence Government's Exhibit 6c.

- (26) The Court erred in admitting in evidence Government's Exhibit 6d.
- (27) The Court erred in admitting in evidence Government's Exhibit 6e.
- (28) The Court erred in admitting in evidence Government's Exhibit 6f. [48]
- (29) The Court erred in admitting in evidence Government's Exhibit 6g.
- (30) The Court erred in admitting in evidence Government's Exhibit 6h.
- (31) The Court erred in admitting in evidence Government's Exhibit 6i.
- (32) The Court erred in admitting in evidence Government's Exhibit 6j.
- (33) The Court erred in admitting in evidence Government's Exhibit 6k.
- (34) The Court erred in admitting in evidence Government's Exhibit 61.
- (35) The Court erred in admitting in evidence Government's Exhibit 6m.
- (36) The Court erred in admitting in evidence Government's Exhibit 6n.
- (37) The Court erred in admitting in evidence Government's Exhibit 60.
- (38). The Court erred in admitting in evidence Government's Exhibit 6p.
- (39) The Court erred in admitting in evidence Government's Exhibit 6q.
- (40) The Court erred in admitting in evidence Government's Exhibit 6r.

- (41) The Court erred in admitting in evidence Government's Exhibit 6s.
- (42) The Court erred in admitting in evidence Government's Exhibit 6t.
- (43) The Court erred in admitting in evidence Government's Exhibit 6u.
- (44) The Court erred in admitting in evidence Government's Exhibit 6v. [49]
- (45) The Court erred in admitting in evidence Government's Exhibit 6w.
- (46) The Court erred in admitting in evidence Government's Exhibit 6x.
- (47) The Court erred in admitting in evidence Government's Exhibit 6y.
- (48) The Court erred in admitting in evidence Government's Exhibit 6z.
- (49) The Court erred in admitting in evidence. Government's Exhibit 6aa.
- (50) The Court erred in admitting in evidence Government's Exhibit 6bb.
- (51) The Court erred in admitting in evidence Government's Exhibit 6cc.
- (52) The Court erred in admitting in evidence Government's Exhibit 6dd.
- (53) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich.
- (54) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.

- (55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.
- (56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri de B. Claiborne.
- (57) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury. [50]

#### Third Count

- (1) The Third Count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against, the United States.
- (2) The evidence introduced on behalf of the Government on the Third Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.
- (3) The verdict is against the weight of the evidence.
- (4) The information introduced by the Governnt fails to show that the information conspired to be transmitted concerns or affects the national defense.
  - (5) The evidence fails to show that the defendant Hafis Salich conspired to transmit the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

- (6) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.
- (7). The Court erred in its definition of the term "affecting the national defense" in the instructions given to the jury.
- (8) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "A" for identification.
- (9) The Court erred in admitting in evidence Government's Exhibit 5a.
- (10). The Court erred in admitting in evidence Government's Exhibit 5b.
- (11) The Court erred in admitting in evidence Government's Exhibit 5c.
- (12) The Court erred in admitting in evidence Government's Exhibit 5d.
  - (13) The Court erred in admitting in evidence Government's Exhibit 5e.
  - (14) The Court erred in admitting in evidence Government's [51] Exhibit 5f.
- (15) The Court erred in admitting in evidence Government's Exhibit 5g.
- (16) The Court erred in admitting in evidence Government's Exhibit 5h.
- (17) The Court erred in admitting in evidence Government's Exhibit 5i.
- (18) The Court erred in admitting in evidence Government's Exhibit 5j.

- (19) The Court erred in admitting in evidence Government's Exhibit 5k.
- (20) The Court erred in admitting in evidence Government's Exhibit 51.
- (21) The Court erred in admitting in evidence Government's Exhibit 5m.
- (22) The Court erred in admitting in evidence Government's Exhibit 6a.
- (23) The Court erred in admitting in evidence Government's Exhibit 6b.
- (24) The Court erred in admitting in evidence Government's Exhibit 6c.
- (25) The Court erred in admitting in evidence Government's Exhibit 6d.
- (26) The Court erred in admitting in evidence Government's Exhibit 6e.
- .(27) The Court erred in admitting in evidence Government's Exhibit 6f.
- (28) The Court erred in admitting in evidence Government's Exhibit 6g.
- (29) The Court erred in admitting in evidence Government's Exhibit 6h.
- (30) The Court erred in admitting is evidence Government's [52] Exhibit 6i.
- (31) The Court erred in admitting in evidence Government's Exhibit 6j.
- (32) The Court erred in admitting in evidence Government's Exhibit 6k.
- (33) The Court erred in admitting in evidence Government's Exhibit 61.

- (34) The Court erred in admitting in evidence Government's Exhibit 6m.
- (35) The Court erred in admitting in evidence Government's Exhibit 6n.
- (36) The Court erred in admitting in evidence Government's Exhibit 60.
- (37) The Court erred in admitting in evidence Government's Exhibit 6p.
- (38) The Court erred in admitting in evidence Government's Exhibit 6q.
- (39) The Court erred in admitting in evidence-Government's Exhibit for.
- (40) The Court erred in admitting in evidence Government's Exhibit 6s.
- (41) The Court erred in admitting in evidence Government's Exhibit 6t.
- (42) The Court erred in admitting in evidence Government's Exhibit 6u.
- (43) The Court erred in admitting in evidence Government's Exhibit 6v.
- (44) The court erred in admitting in evidence Government's Exhibit 6w.
- (45) The Court erred in admitting in evidence Government's Exhibit 6x.
- (46) The Court erred in admitting in evidence Government's [53] Exhibit 6y.
  - (47). The Court erred in admitting in evidence Government's Exhibit 6z.
  - (48) The Court erred in admitting in evidence Government's Exhibit 6aa.
  - (49) The Court erred in admitting in evidence Government's Exhibit 6bb.

- (50) The Court-erred in admitting in evidence Government's Exhibit 6cc.
- (31) The Court erred in admitting in evidence Government's Exhibit 6dd.
- (52) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich.
- (53) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.
- (54) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.
- (55) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri de B. Claiborne.
- (56) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

WILLARD J. STONE, JR.,
Attorney for Hafis Salich.

[Endorsed]: Filed March 22, 1939.

Received copy of the within this 21st day of March, 1939.

BEN HARRISON, U. S. Attorney

[54]

# [Title of District Court and Cause.]

# NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS OF MIKHAIL NICHOLAS GORIN.

Name and Address of Appellant:
Mikhail Nicholas Gorin,
residing at 147 North Irving Boulevard,
Los Angeles, California.

Name and Address of Appellant's Attorneys:
Pacht, Pelton, Warne & Black,
Isaac Pacht and Clore Warne,
Room 510, Union Bank Building,
325 West Eighth Street,
Los Angeles, California.

#### Offense:

Violation of Sections 31, 32 and 34 of Title 50, United States Code.

Date of Judgment: March 20, 1939.

Brief Description of Judgment or Sentence:

On Count One of the indictment, the court imposed a sentence of two (2) years penal servitude in a penitentiary to be selected by the Attorney General and a fine of Ten Thousand Dollars (\$10,000).

On Count Two of the indictment, the court imposed a sentence of six (6) years penal servitude in a penitentiary to be selected by the Attorney General.

On Count Three of the indictment, the court imposed a sentence of six (6) years penal servitude

in a penitentiary to be selected by the United States Attorney General.

The court ordered and adjudged further that the sentences on Counts One and Two run concurrently with the sentence [56] imposed as to Count Three.

I, Mikhail Nicholas Gorin, the above named appellant, hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment above mentioned, on the grounds set forth below.

Pursuant to Rule V, I hereby serve notice that I do not elect to enter upon service of the sentence pending appeal.

Dated: March '20, 1939.

MIKHAIL NICHOLAS GORIN,

Appellant.

PACHT, PELTON, WARNE & BLACK-ISAAC PACHT, CLORE WARNE.

Attorneys for Appellant. [57]

#### Grounds of Appeal

I. The indictment fails to state a public offense or a crime against the United States or a violation of Sections 31, 32 or 34 of Title 50, United States Code, or any of them. The Court erred in overruling the demurrer of appellant to said indictment, and in denying his motion to quash the indictment.

II. That there was no evidence whatever to submit to the jury sufficient to support or sustain a verdict and judgment of conviction under said indictment, or any of the counts thereof, and that the Court erred in denying appellant's motions for a directed verdict of acquittal.

III. That the verdict of the jury is against the law. That the Court erred in its instructions to the jury and in overruling exceptions thereto rude and taken by the appellant and in refusing to instruct the jury as requested by appellant.

IV. The Court erred in construing and interpreting Sections 31, 32 and 34 of Title 50, United States Code, and in instructing the jury as to the meaning of said statutes and in requiring the jury, by its instruction, to find and determine a matter of law and the meaning and interpretation of a criminal statute, all in violation of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

V. That the Court erred in its rulings on the admission and rejection of evidence during the trial of said cause, to all of which appellant objected, and as to which adverse rulings exceptions were duly allowed and saved. [58]

VI. That the verdict of the jury is contrary to

and in violation of the instructions on the law given to it by the court.

Respectfully submitted,
PACHT, PELTON, WARNE & BLACK,
ISAAC PACHT,
CLORE WARNE,

Attorneys for Appellant.

Received copy of the within this 20th day of March, 1939.

BEN HARRISON,

U. S. Attorney.

[Endorsed]: Filed March 20, 1939.

[59]

# [Title of District Court and Cause.]

#### BOND ON APPEAL

Be it remembered, that on the 20th day of March, 1939, before me, David B. Head, a Commissioner duly appointed by the District Court of the United States for the Southern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the Courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Mikhail Nicholas Gorin, as principal, and Fifty Thousand Dollars (\$50,000) in cash owned by Natasha Gorin as surety, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of Fifty Thousand Dollars (\$50,000), separately to be levied and made out of their respective goods and

chattels, lands and tenements, to the use of the said United States, if default shall be made to the conditions following, to wit:

Whereas, lately on the 20th day of March, 1939, in the District Court of the United States, for the Southern District of California, Central Division, in a cause pending in said District Court between the United States of America and said Mikhail Nicholas Gorin, defendant, a judgment and sentence was rendered against the said Mikhail Nicholas Gorin, and the said Mikhail Nicholas Gorin filed an appeal in the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the judgment; and [202]

Whereas, bail was fixed in the sum of Fifty Thousand Dollars (\$50,000) pending the disposition of said appeal.

Now, the conditions of this recognizance are such, that if the said Mikhail Nicholas Gorin shall appear either in person or by attorney in the United States Circuit Court of Appeals, for the Ninth Circuit when said cause is reached for argument or when required by law or rule of said United States Circuit Court of Appeals and from day to day thereafter in said United States Circuit Court of Appeals until said cause is finally disposed of, and shall abide by and obey all orders made in said cause and shall surrender himself in execution of the judgment and sentence appealed from upon such day as the District Court of the United States for the Southern District of California may direct,

if the judgment and sentence appealed from shall be affirmed, and shall appear before the District Court of the United States for the Southern District of California on such day or days as shall be set for a retrial of said case, provided the judgment of the District Court of the United States for the Southern District of California is reversed by the said United States Court of Appeals; and shall not depart the jurisdiction of the District Court of the United States for the Southern District of California without leave, then this recognizance to be void, otherwise to remain in full force, virtue and effect.

And we, the undersigned Principal and Surety, do hereby stipulate, agree and consent, that in case the aforesaid Recognizance shall be forfeited judgment may be entered for the sum set forth in said Recognizance, and that execution issue thereon according to law.

MICHAEL NICHOLAS GORIN, M. GORIN,

Principal.

# NATASHA GORIN,

Surety.

Acknowledged before me the day and year first? above written.

#### R. S. ZIMMERMAN,

Clerk, United States District Court, Southern District of California. [203] United States of America, Southern District of California, Central Division, State of California, County of Los Angeles—ss.

Natasha Gorin, being sworn, deposes and says: That she is the owner of Fifty Thousand Dollars deposited herein as surety on the within bond.

# NATASHA GORIN,

Name North Tryin

147 North Irving Boulevard,Los Angeles, California.Address

Examined and recommended for approval as provided in Rule 13.

PACHT, PELTON, WARNE & BLACK, ISAAC PACHT,

Attorney.

Approved as to form.

BEN HARRISON,
United States Attorney,
By NORMAN W. NEUKOM,

Asst. United States Attorney.

You are hereby directed to transfer the \$50,000 in cash heretofore deposited in this case pending sentence to apply as surty on the within bond.

NATASHA GORIN.

Los Angeles, Calif. March 20, 1939. I hereby approve the within bond. Defendant tobe released upon delivery hereof.

RALPH E. JENNEY

U. S. District Judge.

March 20, 1939.

[Endorsed]: Filed March 20, 1939.

[204]

[Title of District Court and Cause.]

# NOTICE OF ELECTION TO COMMENCE SENTENCE

Pursuant to Rule V of the Supreme Court, Hafis Salich hereby gives notice that he elects to commence service of his sentence immediately.

Dated: April 7, 1939.

HAFIS SALICH.
WILLARD J. STONE, JR.,
Attorney for Hafis Salich.

[Endorsed]: Received copy of the within Notice, etc., this 7th day of April, 1939.

BETTY MARSHALL GRAYDON,
Asst. United States Attorney,
Attorney for Plff.

Received copy of the within Notice this 7th day of April, 1939.

ROBERT E. CLARK, U. S. Marshal, By D. P. SNYDER, Deputy.

[Endorsed]: Filed April 7, 1939.

[205]

[Title of District Court and Cause.]

STIPULATION RE FORWARDING ORIGINAL EXHIBITS TO CIRCUIT COURT OF APPEALS, ETC.

It is hereby stipulated by and between counsel for the Government and the defendants herein that there shall be forwarded by the Clerk of said District Court to the Clerk of the Circuit Court of Appeals all of the original exhibits received in evidence; where they may be considered and used in connection with the pending appeal.

It is further stipulated that a photostatic or photographic reproduction of the Government exhibit No. 3 shall be inserted in the printed transcript of record on appeal at the appropriate place designated in the Bill of Exceptions.

Dated: This 29th day of June, 1939.

BEN HARRISON,

United States Attorney,

By NORMAN W. NEUKOM,

Assistant United States

Attorney,

Attorney for Plaintiff.

PACHT, PELTON, WARNE

& BLACK,

By CLORE WARNE, CLORE WARNE.

> Attorneys for defendant Mikhail Nicholas Gorin:

WILLARD J. STONE, JR.

Attorney for defendant Hafis Salich.

#### ORDER

It is so ordered.

Dated: June 29, 1939.

RALPH E. JENNEY, Judge.

[Endorsed]: Filed June 29, 1939.

[206]

# [Title of District Court and Cause.] PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL

To the Clerk of the above Entitled Court:

Please prepare and certify a transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled action, and include therein the following papers and proceedings. You may eliminate all captions, except in the indictment, and other introductory matters so far as possible.

- 1. Indictment returned January 11, 1939.
- 2. Demurrer and motion of defendant Mikhail Nicholas Gorin (and Natasha Gorin) to quash said indictment;
- 3. Demurrer and motion to quash said indictment of defendant Hafis Salich;
- 4. Minutes of the court of January 16, 1939, including ruling on demurrer and motion to quash and exception allowed and arraignment and plea of the defendant Mikhail Nicholas Gorin;

- 5. Minutes of the court of January 16, 1939, including ruling on demurrer and motion to quash and exception allowed and arraignment and plea of the defendant Hafis Salich;
- 6. Demand and notice of motion for bill of particulars of the defendant Mikhail Nicholas Gorin;
- 7. Demand and notice of motion for bill of particulars of the defendant Hafis Salich;
- 8. Stipulation and order in lieu of bill of particulars; [207]
- 9. Minutes of March 10, 1939, showing the verdict;
- 10. Minutes of March 20, 1939, showing the sentence and judgment of defendant Mikhail Nicholas Gorin;
- 11. Minutes of March 20, 1939, showing the sentence and judgment of defendant Hafis Salich;
- 12. Judgment and commitment of defendant Hafis Salich and defendant Mikhail Nicholas Gorin;
- 13. Notice of appeal of defendant Mikhail Nicholas Gorin;
- 14. Notice of appeal of defendant Hafis Salich;
- 15. Minutes of March 20, 1939, fixing bail of defendant Gorin on appeal;
- 16. Bail bond of defendant Gorin on appeal;

- 17. Certified and engrossed Bill of Exceptions filed herein;
- 18. Assignment of Errors of defendant Mikhail Nicholas Gorin, filed herein;
- 19. Assignment of Errors of defendant Hafis Salich, filed herein;
- 20. Stipulation and order directing transmission of exhibits;
  - 21. Copy of this praecipe. .

Dated: This 29th-day of June, 1939.

PACHT, PELTON, WARNE

& BLACK,

By CLORE WARNE,

CLORE WARNE,

Attorneys for defendant and appellant, Mikhail Nicholas Gorin.

WILLARD J. STONE, JR.,
Attorney for defendant and
appellant, Hafis Salich.

[Endorsed]: Served and filed June 29, 1939.

[208]

# [Title of District Court and Cause.]

#### CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 208, inclusive, contain full,

true and corerct copies of the Indictment; Demurrer and Motion to Quash Indictment of Deft. Hafis Salich; Demurrer and Motion of Defts. Gorin to Quash Indictment; Minutes of January 16, 1939; Demand for Bill of Particulars; Affidavit for Notice of Motion; Notice of Motion for Bill of Par ticulars of Defts. Gorin; Notice of Motion for Bill of Particulars of Deft. Salich; Stipulation and Order in lieu of Bill of Particulars; Minutes of March 10, 1939; Minutes of March 20, 1939; Notice of Appeal of Deft. Salich; Notice of Appeal of Deft. Gorin; Assignment of Errors of Deft. Salich; Assignment of Errors of Deft. Gorin; Bond on Appeal; Notice of Election to Commence Sentence by Deft. Salich; Stipulation re forwarding Original Exhibits; Praecipe for Transcript of Record on Appeal, which together with the original Bill of Exceptions and Exhibits, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the Clerk for comparing, correcting, and certifying the foregoing record amount to \$28.05, and that said amount has been paid me by the Appellants herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 14th day of July, A.D. 1939.

[Seal] R. S. ZIMMERMAN,

Clerk,

By EDMUND L. SMITH,

Deputy Clerk.

[209]

# [Title of District Court and Cause.]

#### BILL OF EXCEPTIONS

Be it remembered that this cause came on regularly for trial on the 21st day of February, 1939, before the Honorable Ralph E. Jenney, Judge presiding, with a jury, the United States of America being represented by Ben H. Harrison, United States Attorney, and Norman W. Neukom, Assistant United States Attorney, and the defendants, Mikhail Nicholas Gorin and Natasha Gorin, being present in person, and being represented by Pacht, Pelton, Warne & Black, Issac Pacht and Clore Warne, their attorneys, and the defendant Hafis Salich being present in person, and being represented by Willard J. Stone, Jr., his attorney, and the jury having been duly impaneled and sworn, the following proceedings were had.

Ben Harrison, Esq., United States Attorney, then made an opening statement on behalf of the plaintiff, after which the following evidence was presented and the following proceedings taken and had.

Whereupon the defendant Mikhail Nicholas Gorin (hereinafter referred to as the defendant Gorin), moved the Court to dismiss the indictment and direct a verdict of acquittal as to each and every count thereof upon the following grounds:

[210]

1. That the said indictment does not, nor does any count thereof, state a penal offense under any statute or law of the United States.

- 2. That the said indictment and the opening address of the District Attorney to the jury show that no penal offense under any statute or law of the United States has been committed.
- 3. That reports of surveillance of persons do not affect the national defense or pertain to the national defense as that term is used in the statutes under which this prosecution is being had.
- 4. That said moving defendant obtained or conveyed or transmitted, or conspired to obtain or transmit, no document, matter or thing named and set forth in the statutes under which this prosecution was instituted, and is being conducted, relating to or connected with the national defense.
- 5. That the idictment, and/or the indictment as amplified by the bill of particulars, and as further amplified by the address of the District Attorney to the jury just made, show upon their face that none of the acts alleged to have been committed by said moving defendant related to or was connected with the national defense as that term is used in Sections 31, 32 and 34 of the Espionage Act.
- 6. That if the substantive facts alleged in the indictment, as amplified by the bill of particulars, and as further amplified by the opening statement of the District Attorney just made to the Court, are construed to be included within the term "National Defense" or to be covered by Sections 31, 32 and 34 of the Espionage Act, it is unconstitutional and void as being uncertain and prescribing no standards of guilt or

conduct wherewith to guide said defendant, and as delegating to the Court and jury power to legislate as to the meaning of said terms and words, all as contrary to the Fifth and Sixth Amendments to the Constitu-[211] tion of the United States.

Said motion was by the Court denied and an exception allowed.

Whereupon the defendant, Hafis Salich, moved the Court for a directed verdict upon each and every one of the three counts of the indictment, on the following grounds:

That the statement of the United States Attorney, as stated in his opening address to the jury, does not show that the information alleged to have been obtained in Count 1 of the indictment, and disclosed and communicated in Count 2 of the indictment, and which the defendants are alleged to have conspired to disclose in Count 3 of the indictment, affect the national defense.

Upon the further ground, that the opening statement of the Government does not show proof, or his ability to present proof, upon the specific statutory intent which is set forth in the statute, that is, intent or reason to believe that the information is to be used to the injury of the United States and the benefit of a foreign nation.

And upon the further ground that no offense is committed against the United States by the defendants Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin by conspiring to disclose, one to the other, information affecting the national defense.

Said motion was by the Court denied and an exception was allowed. [212]

There was then offered in evidence a stipulation signed by counsel for the parties to the effect that the defendant Gorin was a citizen of the Union of Soviet Socialist Republics, which said stipulation was received in evidence and marked "Government's Exhibit No. 1."

There was then offered for the purpose of identification and marked "Government's Exhibit No. 2 for identification," another stipulation relative to certain records of the Bureau of Immigration of the Department of Labor.

# L. V. McCLOUD

called as a witness on behalf of the Government, being sworn, testified as follows:

# Direct Examination

# By Mr. Harrison:

My name is L. V. McCloud. I live at 3212 Larga Avenue, Los Angeles, California. At the present time I am selling insurance. On September 30, 1938, I was engaged as a salesman on the outside in the dry cleaning business, and was employed by Leonard and Nelson Dry Cleaning Company. They are located at 4400 Melrose. I am not acquainted with Mrs. Gorin. I recall seeing her a few times, that is all. I know who she is and recognize her in the courtroom. I first met her about six months ago, I would judge approximately. She was then living

at an address on Palmerston. The occasion of my. meeting her was to pick up some dry cleaning. I met her thereafter approximately six or eight times, I suppose. She moved from that address to one on North Vermont. I saw her there but cannot recall the date of the first meeting exactly. I saw her there September 30th of last year and remember calling upon her at that time. I would say it was about ten o'clock in the morning. I called on her at her home to solicit dry cleaning. I received a couple of suits from her personally [213] at that time, and took them out and put them in the truck and went on my way. About a half hour later, after making some other stops, I had occasion to write up the orders that I had picked up and put the tickets in the pockets of the suits and articles that I picked up. These were men's suits that I picked up, also a ladies' blouse, I think. When I put the order in the pocket of one of the men's suits, I found an envelope. I cannot say what pocket it was. It was a regular sized envelope, a stationery envelope. I examined the contents of the envelope and found a form of letter-which really wasn't a letter; it had no heading or anything. It was a form of a document with a \$50 bill in this envelope. I put the envelope in my pocket and I put the contents back in the envelope. I went on my way to Beverly Hills and made some more calls, and called in to the shop for my calls for pick ups about 10:30 or eleven o'clock. I made some more calls that I had

received over the telephone and then I called back in to Mr. Leonard or in to the shop. I thereafter returned to the shop. This was approximately twelve o'clock in the daytime. I returned to the shop about two hours after going to the Gorin home on North Vermont. I did not enter the shop when I returned then. I saw at the shop a man that was living up at the Gorins at that time. I did not know the man. I did not know who he was. I don't know his name. When I first drove up I didn't see anyone with the exception of him I then drove away and went to the corner down on Beverly Boulevard and called up the shop again. I then waited there for Mrs. Nelson to come down. I wanted to talk to her. She is the owner of the place where I worked. After I talked to her, I went to the Hollywood Police Station. I had showed to Mrs. Nelson this envelope and its contents. I still had it with me when I went to the police station. There I saw the secretary—they sent me upstairs to the police depart- [214] ment-one of the heads of the police department up there, the detective bureau, I guess it was, the head of the detective bureau. Miss Hendricks I think was the secretary's name; Captain Jones, I believe, was the man that I saw and talked to. I showed this envelope that I found to them. The secretary made a copy of the letterthis document. I saw her make the copy. When I spoke of the secretary I mean Miss Fredericks.

The envelope had no writing on it. The document had some writing and handwriting on it in a foreign lang age. I was present while Miss Fredericks made a copy of the document. Everything that was on the original document was copied with the exception of the foreign writing. After the copy was made, I put the original back in the envelope and went back to the shop. When I arrived at the shop I gave it to Mrs. Gorin personally. This was approximately one o'clock. The document you show me, which has in red "R2896," looks very much like the same copy.

The document referred to was marked "Government Exhibit No. 3 for identification."

(Witness continues)

I saw Miss Fredericks operate the typewriter and saw her typewrite this document. This particular document, Government's Exhibit No. 3 for identification, is the same copy. I saw Miss Fredericks place some figures and drawings on the bottom of the document which she drew as near like the one that was on the letter as possible. She made a very good copy of it, however, because we compared them at the time. The original of that document, with the exception of the writing in a foreign language, was the instrument that was found in this envelope and suit, and was the instrument that I returned and gave to Mrs. Gorin. I had picked up clothes before from Mrs. Gorin. The man that was

at the shop when I returned on my way to the police station I would describe as follows: he was rather a slender fellow. I thought he was of [215] a Mexican type, but I found out later he was Russian. I would say that he was about 5-7 or about 5-6 tall, and weighed about 145 or '50 pounds, a rather slender fellow. I saw him after that time down on Main Street. I was called to identify him in the Government building. I identified him at that time. This was on Sixth and Main in the Pacific Electric Building. I think it was on the second or third floor, where the Government offices were at that time. His name was Stepanian.

#### Cross Examination

By Mr. Pacht:

Before I met this gentleman, whose name was just mentioned to me by Mr. Harrison, Mr. Stepanian, I had seen him at Mr. Gorin's house on about three occasions. He was not introduced to me by either Mr. or Mrs. Gorin. To be frank about it, I don't know really when I found out his name. I don't know when I remember hearing it first, or what it was, as to his name. Mrs. Gorin was one of my regular customers from whom I received clothes to clean in the regular course of our business. She was recommended through someone else. That is how I happened to get the order, the first order.

e afron the top

And from time to time I picked up all kinds of clothes at her house to be cleaned, just men's clothes and women's clothes, that is all.

# ALICE A. NELSÔN

called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

By Mr. Harrison:

My name is Alice A. Nelson and I live at 1907 Lucile Avenue. I own a dry cleaning establishment located at 4400 Melrose. It is operated under the name of Leonard and Nelson Dry Cleaning Company. I have never seen Mrs. Gorin until September 30th when she came into the store. [216] I would say it was approximately 10:30 in the morning when she came to my place on that day. The office force was present when she came in. A gentleman was with her. I would know him again if I saw him. I didn't know his name at the time. Thereafter I learned his name. It was Stepanian. I had a conversation with Mrs. Gorin at my place of business when she came in that morning. I think perhaps Mr. Leonard was also present. I couldn't say definitely. We were all working in the back part of the store, and Mrs. Gorin was standing at the back part

# (Testimony of Alice A. Nelson.)

of the store, where they could hear any conversation that went on. Whether they made any note of it or not, I couldn't say.

Q. What did Mrs. Gorin say to you at that time?

To which question objection was made on behalf of defendants Gorin and Salich on the ground that it was hearsay as to them, not binding, incompetent, irrelevant and immaterial, and on the further ground that no foundation had been laid and no proof of any conspiracy had been introduced, which said objection was overruled, subject to a motion to strike said testimony if not connected up. Exception allowed.

The Witness: She asked me when I expected Mr. McCloud in, and how long did I think she would have to wait for him.

# By Mr. Harrison:

- Q. Did you make any reply to her?
- A. I told her that it would be some time around 12:00 or 12:30; that he usually came in about that time.
- Q. And what time did you say this conversation took place, about what time?
  - A. Around 10:30 in the morning.
- Q. Was that the substance of your conversation at that time?

# (Testimony of Alice A. Nelson.)

- A. Yes. She came back and asked me, I would say maybe [217] two or three times afterwards, how much longer—
  - Q. (Interrupting) I mean at that time.
  - A. At that time that was all there was to it.
  - Q. Then at that time what did Mrs. Gorin do?
  - A. She went out and sat down in the office.
  - Q. Did she continue to remain there?
- A. Part of the time; part of the time she was walking around.
- Q. Did you have any further conversation with her that morning?
- A. That was the substance of it, because that was what she was asking. She asked me perhaps two or three times more, how much longer I thought it would be, and if I had heard from Mr. McCloud.
- Q. Did you notice her demeanor at that time? To which question objection was made by the defendant Gorin upon the ground as calling for the opinion of the witness, which objection was overruled. Exception allowed.

#### The Court:

The testimony of this witness, in answer to this question, is not that of an expert. Any one of us knows whether a person is very happy and laughing and smiling or when they seem to be agitated or excited, and they are perfectly capable of describing to the jury that type of emotion without having to be experts.

Testimony of Alice A. Nelson.)

The witness is instructed not to say what she concluded about the conduct of the witness, or to draw any inference. She may tell what Mrs. Gorin did and what her actions were. If, from that, the jury is able to say that she was glad or laughing or agitated, that is a matter for the jury to determine.

# By Mr. Harrison:

- Q. Will you proceed in accordance with the Court's instructions, Mrs. Nelson? [218]
- A. Well, I don't know just what I would say, except that she walked around the store, she wouldn't remain seated. We offered her a magazine, and she didn't want to read. And that was about all I could say. [219]

(Witness continues) That morning she asked me about three times how much longer I thought it would be before Mr. McCloud would come in. Mr. Stepanian did not remain there during the balance of the morning. He left about a half hour after they arrived. I did not talk to Mrs. Gorin at any time that morning on the telephone. I was not present when the envelope was returned to her. I did not remain at the shop all morning. I left around twelve o'clock to meet Mr. McCloud. When I met him he showed me a plain envelope with a sheet of paper with typewriting on it, and a map drawn on it, and some writing at the bottom in a foreign language which I didn't know what it was—and a

(Testimony of Alice A. Nelson.)

\$50 bill. The document Mr. McCloud showed me was a plain sheet of paper, with some typewriting at the top, mentioning some Japanese names, Nakadate was one, and some Japanese dentists, also by the name of Nakadate, as I recall; and a beauty shop operated in San Diego; and a map drawn at the bottom of it, showing a square in the center, and two squares down at the bottom like they might be branches, or something of the sort, and the writing was at the bottom of it. I could not read the writing. It was unintelligible to me. I would say that Government's Exhibit No. 3 for identification which you have shown me was an exact copy of it except for the writing at the bottom. I had no conversation with Mr. Gorin relative to whether or not the money had been found.

#### Cross Examination

By Mr. Stone:

At the time I met Mr. McCloud it was close to twelve o'clock. I was with him I should say five minutes, maybe ten. I met him at the corner of Beverly and Kenmore. We sat in the car and looked over this paper and discussed what to do with it. At the end of ten minutes I returned to the shop. I have never seen the original paper since I first saw it in the car. [220]

Defendant Salich then moved the court to strike the whole of the testimony of the witness Alice A. (Testimony of Denton W. Leonard.)

Nelson upon the ground that it was not binding on him and did not tend to prove or disprove any of the issues against him, which said motion was denied. Exception allowed.

#### DENTON W. LEONARD

called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

By Mr. Harrison:

My name is Denton W. Leonard. I am in the dry cleaning business on 4400 Melrose; and am associated with Mrs. Nelson. I was in such business on Septembe: 30, 1938, and on that day tasked to a lady who said that she was Mrs. Gorin over the telephone. I would say that this was somewhere around 9:00 and 10:30 in the morning. Thereafter I saw Mrs. Gorin on the same morning and learned that she was the same person to whom I had talked on the telephone. I met her in the shop. I don't believe that anyone was present except Mrs. Gorin and myself. It was about 10:00, 10:30 in the morning, along in there somewhere. It wasn't so very long after I had received this telephone call, I would say maybe a half hour.

Q. And what did the party purporting to be Mrs. Gorin say to you?

(Testimony of Denton W. Leonard.)

To which question objection was made on behalf of the defendants Gorin and Salich that it was hearsay as to them and that no conspiracy had as yet been proven and that any statement made by Mrs. Gorin was not binding on them, which objection was overruled. Exception allowed.

The Witness: She said that our driver had called at [221] their home and picked up several garments for dry cleaning, and that in the pocket of one of the suits was some money and some valuable papers.

#### By Mr. Harrison:

- Q. Was anything else said by you to her in response to that statement?
- A. I told her that if they were in the pocket when he picked them up, they would be in the pocket when he brought them in, or he would find them in the meantime.

The Court: Will you repeat that last portion of your statement? I didn't get it.

The Witness: I told her that if they were in the pocket when he picked the garment up, that they would still be there when he brought it in, or else he might have found them in the meantime.

(Witness continues) Mrs. Gorin came into the shop after that. I didn't notice particularly whether anybody was with her. There might have been or might not have. I wouldn't say. I didn't take any particular notice of it. I had no conversation with her in the shop except she asked me if Mr. McCloud

(Testimony of Denton W. Leonard.)
had come in yet, or if he had phoned in, and I told
her no. Later on in the morning Mr. McCloud
talked to me—I don't remember just the time—I
presume around eleven o'clock. I communicated
that fact to Mrs. Gorin. I told her that we found
the money and papers and that he would bring
them in. I do not remember ary response she made
to that. I think she went out on the sidewalk once
or twice. I don't remember, it seems to me she did,
but I wouldn't say positively. She stayed in the
front of the shop, in the office, most of the time. I
didn't pay any attention to her actions while she
was there.

#### Cross Examination

By Mr. Pacht:

-[222]

I wouldn't say that there was nothing about her conduct that attracted my attention at that time, except that she was there, a customer, waiting to see somebody. The place in the front of our establishment where the customers wait is between ten and twelve feet wide and about sixteen feet long. Customers frequently come in and out of our store. Very few of them are impatient about waiting, that is an exception. I couldn't tell the exact time Mrs. Gorin got to our establishment that morning. I would say probably around ten, maybe a little after that—I don't know—I didn't pay any attention to it. It wasn't as late as twelve, I am sure. She

(Testimony of Denton W. Leonard.)

said something about missing some money out of the clothes that had been sent to us. She did not say how much. She asked whether Mr. McCloud had reported finding the money. When she first asked me I told her that he hadn't called in.

#### Redirect Examination

By Mr. Harrison:

Mrs. Gorin called in and talked to me that morning on the telephone just once.

# R. E. WILSON

called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

By Mr. Harrison:

My name is R. E. Wilson. I live at 2042 Glendon Avenue. I am in the dry cleaning business, employed by Alice Nelson at her place of business, 4400 Melrose Avenue. The firm name of the business is Leonard and Nelson. I know Mrs. Gorin when I see her. I first saw her that morning, September 30th, in the shop where the dry cleaning establishment is at 4400 Melrose Avenue. There was someone with her. At that time I did not know who that person was. Thereafter I fearned it was Mr. Stepanian: I would say she came [223] to the place at approximately 10:30 in the morning, maybe a

(Testimony of R. E. Wilson.)

little later, but not a lot. At that time she introduced me to Mr. Stepanian. Prior to her arrival at our place of business, I had talked to her on the telephone, the first time, I would imagine, around ten o'clock.

Q. And will you relate the conversation you had with her at that time?

To which question defendant Gorin objected on the grounds that it was hearsay as to him, not binding upon him, and no foundation laid for its introduction in that no proof of conspiracy had been introduced. Objection was overruled. Exception allowed.

The Court: You may relate the conversation.

The Witness: She asked me if the driver had returned to the store yet. I stated that he had not. She stated that she was Mrs. Gorin, and that they had left some money in some clothes, and I told her that if she had that the chances are that Mr. Mc-Cloud would find it and it would be returned. And, furthermore, she asked me about what time he would be there, at the store.

#### By Mr. Harrison:

Q. What did you tell her?

A. I told her he would call in about 10:30, or approximately around there.

(Witness continues): Thereafter I saw Mrs. Gorin that morning at the shop, 4400 Melrose. Mr. Stepanian was with her as I have testified. I had a conversation with her at that time.

(Testimony of R. E. Wilson.)

Q. Will you please give us the substance of that conversation?

To which question defendant Gorin objected on the grounds that it was hearsay as to him, not binding upon him, and no foundation laid for its introduction in that no proof of conspiracy [224] had been introduced. Objection was overruled. Exception allowed.

The Witness: She simply asked, or rather stated, that Mr. Stepanian would wait for the money.

#### By Mr. Harrison:

- Q. Was there any conversation at that time relative to where Mr. McCloud was, or how she could find him?
- A. Yes. She asked if she could have a list of the customers that he was seeing on that particular morning, and go out and find him on the route, and I objected to that. I said we didn't do that.
- Q. That is the substance of the conversation you had with her? A. Yes, sir.

#### J. J. JONES

called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

# By Mr. Harrison:

I live at 1212 South Highland Avenue, Los Angeles. I am a police officer, Captain of Detectives

(Testimony of J. J. Jones.)

located with the Hollywood Division. I have been on the Police Department since 1913, and have been in Hollywood about two years and a half. I was acting in that capacity on September 30, 1938. I met Mr. McCloud at that time when he came to the office, about September 3rd. I think I am mistaken. I believe it was October 3rd, now, instead of September 3rd. At that time Mr. McCloud showed me an envelope and a letter and a \$50 bill. I examined the letter at that time. I instructed the secretary to copy it as best she could, and return the whole thing, including the envelope, \$50 and the original document, to Mr. McCloud. The document I saw at that time was partly typewritten and partly handwritten. The handwriting seemed to be in a foreign language, one that I couldn't understand. Besides some [225] typewriting and some foreign language, there was on the paper, a diagram, some sort of a diagram. Miss Fredericks, the secretary, copied the body of the instrument and I instructed her to draw as near as she could a copy of the diagram which was on it. She did that. Government Exhibit No. 3 for identification which you are showing me is the copy that Miss Fredricks made of the letter that Mr. McCloud brought in on that day. Everything is complete that was in English. The foreign language, we couldn't make it out very good. We didn't copy that.

(Testimony of J. J. Jones.)

#### Cross Examination

By Mr. Pacht:

When I spoke of a diagram on the original of the paper, of which Government Exhibit No. 3 for identification purports to be a copy, I am referring to the two or three boxes-shown here with the names of some dentist? I was referring to the names of some people here, one having in it the word "dentist" and the other "Paul" with some other word, "born in Hawaii,". I would call that a diagram, what you have there. It is a picture of something, indicating certain locations, so far as that was concerned. That is my opinion as to what is or there. I don't speak Russian and was unable to read anything that was on the bottom of this Exhibit No. 3 for identification. I was not able to read the foreign language that was on there. I suggested to Mr. McCloud that Miss Fredricks make a copy of it. I suggested photostating it at our Police Technical Research Bureau, but Mr. McCloud stated that he thought the people were waiting for it, and I called Lieutenant Lane, who is in charge of our Intelligence Bureau, and he suggested just copying it. It was not photostated, and I turned the document over to my secretary and directed her to make a copy of it on the typewriter as best she could. I approved it after she had made it out. Part of the time I could see her working on the typewriter. I suppose she was making it out. I compared everything that she [226] put on the

(Testimony of J. J. Jones.)

copy. I can't remember whether after she brought the copy to me and brought the original back to me that I or anybody else read either the original or the copy while we compared the documents. I relied on her to make a copy and what she handed to me appeared to be a correct copy, but I took no pains to compare the language as between the original and the copy. I took particular pains to compare the markings on the bottom here with those on the original and these on the copy here offered for identification appear to look like those on the original.

There was then read to the jury by Mr. Neukom, Assistant United States Attorney,

# GOVERNMENT'S EXHIBIT NO. 1,

which, after giving the caption of the case, was in words and figures as follows:

"It is hereby stipulated by and between Ben Harrison, United States Attorney, and Norman W. Neukom, Assistant United States Attorney, on behalf of the plaintiff, and Pacht, Pelton, Warne & Black by and through Clore Warne of counsel, attorneys for the defendants Mikhail Nicholas Gorin and Natasha Gorin, and Willard J. Stone, Jr., attorney for Hafis Salich, as follows:

That it is conceded and admitted for the purpese of this trial that the defendants Mikhail Nicholas Gorin and Natasha Gorin were at all times mentioned in the indictment citizens of the country commonly known as Russia or Union of Soviet Socialist Republics.

It is further stipulated that the said Mikhail Nicholas Gorin and Natasha Gorin did first arrive in this country on or about the 10th day of January, 1936, arriving in this country under a passport issued by the Union of Soviet Socialist Republics, which said passport was No. 02431-24549, issued at Moscow, Russia, November 17, 1935, and that the said Mikhail Nicholas Gorin and Natasha [227] Gorin were admitted into this country by the Immigration and Naturalization service of the United States and have continued to reside in this country under and pursuant to the terms of their original admission and temporary stays granted from time to time thereafter by the Immigration and Naturalization Service.

It is further stipulated that the said Mikhail Nicholas Gorin and Natasha Gorin have been, at all times during their lives, and still are, citizens of the country commonly known as Russia.

It is further stipulated that this stipulation may be read to the court and jury and received in evidence without the necessity on the part of the Government of offering any corroborating or additional evidence to support the facts herein stipulated to.

Dated this 20th day of February, 1939."

There was then offered and received in evidence, GOVERNMENT'S EXHIBIT NO. 2,

said exhibit consisting of a stipulation which was specifically offered only against the defendant Gorin, the Court instructing the jury that such stipulation was not offered against or binding on the defendant Salich.

There was then read to the jury the said Government's Exhibit No. 2, termed "Stipulation pertaining to Immigration and Naturalization file", in words and figures as follows:

"It is hereby stipulated by and between Ben Harrison, United States Attorney, and Norman W. Neukom, Assistant United States Attorney, on hehalf of the plaintiff; and Pacht, Pelton, Warne & Black, by and through Clore Warne of counsel, attorneys for the defendants Mikhail Nicholas Gorin and Natasha Gorin, and Willard J. Stone, Jr., attorney for Hafis Salich, as follows:

That attached to the original of the herein stipulation is a true and exact photostatic copy of the original file of the Department of Labor, No. 55968-75, which bears the certification date of January 11, 1939, and which is a true and exact photostatic copy of the original record relating to the arrival and extension [228] of stay of Mr. Gorin and wife, Natalia and their minor child. That said document consists in all of 32 pages including the certification page

thereof, and is the official record of said file pertaining to said persons for the purposes above designated of the Immigration and Naturalization Service, Department of Labor of the United States of America.

It is stipulated that all interested parties to the herein action have, by and through their counsel, examined the original of said instrument, of which the attached are photostatic copies, and have compared same and are satisfied that the photostatic copies reflect the true and correct copy of the original.

That the said Mr. Gorin and his wife, Natalia, are one and the same as the defendants designated in the herein indictment as Mikhail Nicholas Gorin and Natasha Gorin.

It is further stipulated that whereas, in accordance with the regulations of the Government, the original of said instrument cannot be offered in evidence, that the said photostatic hereunto attached to the original of the stipulation shall be deemed for all purposes as though it were the original of what it purports to reflect.

It is further stipulated that if the contents of the said attached instrument, or any part thereof, is ruled by the Court as material evidence in the trial of the herein case, that the plaintiff need not lay any foundation with respect thereto, such as the producing of officials of the Government to testify as to said instrument being an official record of the Department of Immigration and Naturalization Service and what it purports to be, nor shall the Government be required to produce any of the inspectors, agents or officers who conducted any of the examinations and elicited any of the questions or obtained any of the answers of the parties involved, the defendants herein, as is reflected by the contents of said instrument. [229]

It is further stipulated that no foundation need be laid prior to offer of any of the letters or documents, a part of this complete instrument hereunto attached, independent of the original examination conducted of the defendants and the application made for extension of stay subject to the same reservation as hereinafter appears in this stipulation.

However, while the defendants waive any objections they may have with respect to a foundation which might otherwise have to be laid to offer said instrument in evidence, they reserve the right to object to the materiality and relevancy, in whole or in part, of the contents of said instruments, to the interests involved in the herein action.

It is further stipulated that if the Court rules said attached file, or any part thereof, is material and relevant in connection with the trial of the herein action, that said instrument, or any part thereof, so ruled by the Court as being material may be offered in evidence."

Mr. Neukom: At this time, your Honor, I will not read the parts, but will reserve the right to do so at some later time.

Hereafter in this Bill of Exceptions is contained the balance of Exhibit No. 1 thereafter read to the jury.

# ISABEL A. FREDERICKS

called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

By Mr. Neukom:

I am secretary to the Captain of Detectives, Hollywood, Captain J. J. Jones, who testified the other day, I have been engaged in that work for sixteen years. I recall an incident on September 30th of last year, which occurred at our offices in Hollywood. I was on duty and Mr. McCloud came in. It was between twelve and one, I should say. I had a conversation with him about the document, there being present Mr. McCloud and myself. He is the same Mr. McCloud whom I saw testify the other day. I have seen [230] Government Exhibit No. 3 for identification you are showing me. I saw it on September 30th when I received a copy. I prepared it from an original copy of the document I received on that date. I received it from Mr. McCloud originally. I examined the original document. Government's Exhibit No. 3 for identification reflects (Testimony of Isabel A. Fredericks.)

substantially the contents of the original document so far as the typing is concerned. After I had typed this copy from the original document which Mr. McCloud presented to me, I compared the typed copy with the original document, and found it to reflect substantially that it was an exact copy of the original. I prepared the document at the bottom of the page where there are certain squares and names within those squares, or beside them, in ink. I prepared them from a diagram on the original copy that I had received. There was some additional writing on the original document which was in pencil. I could not read all of it. The only thing I read was what I copied. The other was in a foreign language, and I couldn't make it out, so I left it out. The word "Copy" at the very top of the page on Government Exhibit No. 3 for identification did not appear on the original document. The red sym-Sbol on it, "R 2896" on the right-hand side, was not on the original document from which I copied.

## Cross Examination

By Mr. Pacht:

I did the best I could to make a correct copy of this document, Government Exhibit No. 3 for identification. My artistic work in the way of drawing was the best that I could do. As far as I am now able to tell, what I drew here in the way of lines at the bottom of Government Exhibit No. 3 for identification looks as much alike as the original

(Testimony of Isabel A. Fredericks.)

Paralle Andrew

from which I copied, except these lines with the names of "Dr. Nakadate" and "Paul" and "Dentist", which said names were not in typewriting but were in writing. In the original the paper was typewritten in approximately the same places where this copy is typewritten, and was in writing, and had the lines that I have delineated at the bottom of Government's Exhibit No. 3 for [231] identification.

# Questions by the Court

(Witness continues): After I made this copy, I compared it with the original document from which I made it. When I say it is substantially a copy, I mean that the words and punctuation are exact with the original. The spelling, and so forth, is exact with the original. When I meant substantially, I meant it might not have been placed on the paper in the same form as the original.

### ROY HANNA

called as a witness on behalf of the Government, being sworn, testified as follows:

### Direct Examination

By Mr. Neukom: ,

I reside in San Pedro, 523½ South Grand. I am a Chief Yeoman in the United States Navy and a Chief Yeoman does secretarial work, but I am

assigned to work in the Naval Intelligence Office at San Pedro. I have been there since March, 1935. At the present time I am employed in the Intelligence Office there. From 1935 to the present time I worked with the group of the Navy called the Naval Intelligence and during 1936, that is in August, 1936, I was then working with the same group at San Pedro. I was secretary in the office. Lt. Commander J. J. Roachefort, United States Navy, was commanding officer of that particular office. He is not the commanding officer at the present time. The present commanding officer is Lt. H. D. B. Clayborne.

Mr. Neukom: Your Honor, I might say that the remainder of this testimony, for a period of time, according to the theory of the Government, will only refer to the Defendant Salich.

Mr. Pacht: I take it that the District Attorney means that it is only offered as against the Defendant Salich, and that it is in no way offered as against the Defendants Gorin, or either of them, and is not binding upon them. [232]

Mr. Neukom: That is correct, your Honor.

The Court: Will you indicate to the jury and to the Court when you have concluded the introduction of that portion of the testimony which is applicable only to the Defendant Salich?

Mr. Neukom: I will.

(Witness continues): I first met the defendant Salich either the latter part of July, or the first part

of August, 1936. I met him in the office on Seventh Street, in the Cabrillo Theatre Building. That was the office of Naval Intelligence, which was then located on Seventh Street in the Gabrillo Theatre Building, and since then has moved to another office. Lt. Commander Roachefort, Commander Davis, Salich and myself were present when I first met Salich. Those gentlemen were connected with the United States Navy. Commander Davis was the District Intelligence Officer at that time; Lt. Commander J. J. Roachefort was the Assistant Naval Intelligence Officer. I don't know the exact time of this conversation, but it was in the morning. I overheard all of it.

Q. Will you relate to the jury the conversation that you overheard between Commander Davis, Commander Roachefort, and defendant Salich?

To which question defendant Gorin objected upon the grounds that even though it was not offered against him, it was all remote, and irrelevant, not to be binding, and that the relation of such conversation would bring before the jury matters which could not but be highly prejudicial, which said objection was overruled. Exception allowed.

The Court stated in overruling the objection as follows:

The Court: It is possible, of course, that evidence will be introduced during the course of the trial which may, in one instance, be applicable to one defendant—Salich, for instance—and at other

times evidence may be introduced which is applicable only to the [233] Defendant Gorin, or possibly to one of them. It is a common practice recognized by our courts, and unless an application is made properly within the provisions of the statutes and the rules for severance, and there is an indication to the court of the reasons why it would be extremely prejudicial, or would be sufficiently prejudicial, so that the court would be disposed to grant separate trials, we must necessarily proceed on this basis.

The defendant Salich objected upon the ground that it would not tend to prove or disprove any issue in the case and would be inflammatory and prejudicial, which objection was overruled. Exception allowed.

A. Commander Davis, when Salich came in the office, I was [234] introduced to Salich, and Commander Roachefort was introduced to Salich.

Q. A little louder so we can all hear you.

A. In the course of the conversation Lieutenant-Commander Roachefort told Salich what the office did and the

Q. (Interrupting): Wait. Relate what he said.

A. Mr. Roachefort said that everything that Salich did in the office, or outside of the office, was confidential, and that at no time was he to reveal anything that occurred in the office to anyone on the outside, and in addition, he further instructed Salich that he was not to tell any member of his family or his wife.

Q. Did he tell him what position he was being employed in, or what position he was to fill?

A. He told him he was being employed as an investigator.

Q. For what?

A. For the Naval Intelligence.

Q. And did Mr. Salich say anything during that conversation, as you recall?

A. Mr. Salich asked whether or not he could obtain an identification card or some badge with which to work with on the outside.

Q. Did he state what type of a badge he wanted?

A.: To identify himself with the Naval Intelligence or some other badge which would give him authority.

Q. What was told to him?

A. He said—Mr. Roachefort said—that the Navy, or the officers of the Naval Intelligence, did not issue any passes of any kind or badges or identification cards.

Q. Did he have any conversation with him at that time as to whether or not he was to disclose his identity, as you recall?

A. Mr. Roachefort told him that he would at that time not reveal that he was working for the Naval Intelligence. [235]

## By Mr. Neukom:

Q. Do you recall to your best recollection the date in August of 1936 that this took place?

A. 15th of August, 1936.

Q. That is your best recollection?

A. That is right.

The defendant Gorin moved the Court to strike the whole of the conversation related by the witness between Commander Roachefort, Commander Davis, and Mr. Salich, upon the grounds theretofore urged in objection to the questions covering such conversation, and on the further grounds that the instructions which Commander Roachefort gave Salich and what he designated as secret and confidential, was incompetent and immaterial. Objection was overruled. Exception allowed.

The Court stated in overruling the objection as follows:

The Court: Gentlemen of the jury, I desire at this time to explain to you, very briefly, that this evidence that was introduced, or permitted to be introduced by the Court, is applicable only to the Defendant Salich, not as in any way binding upon, or applicable to the Defendants Gorin, either or both. It is not to be considered by you in any way as adding anything to the sections of the United States Code dealing with the offenses here charged.

No Navy officers, no counsel for the Defendant, or no counsel for the Government may read anything into those sections. The Congress makes the law, and the judge will interpret the law for you. The judge will tell you what the law is, and you are, by your oath, vowed to take that law.

If the Navy officers in any conversations, or any Navy officers in any conversations, or any other officers ever make a statement as to what he thinks the law is, in the course of the conversation, that is not in any way to be considered by you. You [236] take the law from no one but the Court. The Court will, at the proper time, just before you retire, review these sections of the Act and will explain to you what they mean and their applicability to this particular case.

The objections here made by counsel for the Defendants, that the conversations related might be interpreted by the jury as adding something to the law, was overruled by the Court, but the Court wishes to caution the jury that nothing in those conversations, or in any other conversations, that may be introduced by either the Government or the Defendant, is to be considered as adding anything to or reading anything into the United States Statute.

The defendant Salich moved to strike the whole of said conversation on the grounds that the evidence was too remote and had no tendency to prove or disprove the issues in the case. Objection overruled. Exception allowed.

(Witness continues): I received my compensation from the United States Navy. Subsequent to the conversation which I related I have been continuously employed with the Naval Intelligence up to and including the present date there at San Pedro.

#### Mr. Neukom:

The remaining portion of the conversation, or the testimony of the witness Boy Hanna, will deal with matters which we feel are binding upon all of the defendants.

(Witness continues): I was present, in another room, during the early part of the year 1938 when there was a conversation between Mr. Stanley, Commander Roachefort, Mr. Salich, in the office of the Naval Intelligence at San Pedro, with reference to a person by the name of Gorin. This was about the middle of March, 1938. [237] It was in the morning, before noon. There were present in the rooms in which this conversation took place, Confmander Roachefort, Mr. Stanley, Salich and myself. In the set of offices there were two rooms, joined together. During this particular conversation the door of my room was open. This was in: the new post office building on Beacon Street, on the first floor, what they call the basement floor. I was about seven or eight feet away from Mr. Salich, Commander Roachefort and Mr. Standley, when the conversation took place. I heard the whole of it.

Q. Will you recall the substance of the conversation, as you heard it, and in doing so, explain to the jury who was doing the talking.

To which question defendant Gorin objected on the ground that it was hearsay as to him, and that extra-judicial statements or declarations of Salichare incompetent, irrelevant and immaterial. That

(Testimony of Roy Hanna.) there has been no proof of conspiracy, and that

corpus delicti has not been established. Objection overruled. Exception allowed.

In overruling the objection the Court stated as follows:

The Court: The ordinary rules relating to the introduction of hearsay evidence are not, by the decisions of our courts of authority, applicable to conspiracy cases where a conspiracy is involved, because of the theory that the conspiracy is, in effect, a criminal partnership and declarations, statements and acts in connection with conspiracies done by one of the conspirators in furtherance of the conspiracy are binding upon all.

This is evidently in time proper so that it may be admitted. The objection, therefore, on that ground will be overruled.

On the ground that the gravamen of the offense; the conspiracy, has not been proved or, as has been stated, the corpus delicti has not been established, is a much more difficult problem upon which to rule. [238]

The Court is given, by the authoritative decisions. a very broad scope in the conduct of trials in the Federal Court, particularly in conspiracy trials, for the reason that it is almost impossible for either the Government or the defense to put on all of their case at one time. It must be done piecemeal.

Now, either the conspiracy is going to be established by evidence sufficient so that the existence or

non-existence thereof will be submitted to the jury, or it is not. If it is not, no harm can come to the defendants. If it is established, no harm can likewise come by the fact that the proof may be somewhat out of order.

Defendant Salich objected on the ground that there has been no proof of a corpus delicti, no proof of the conspiracy, and that the extra-judicial statements of Salich were not to be used against him at that time. Objection everruled. Exception allowed.

A. Salich told Commander Roachefort that he had contacted Mr. Gorin, and that Mr. Gorin had offered him certain moneys. He asked Commander Roachefort whether or not he should continue to contact Mr. Gorin. Commander Roachefort told Salich not to contact Gorin more and that if he did he would have Stanley with him.

(Witness continues): I know Mr. Salich and Mr. Stanley. Mr. Stanley is likewise an investigator with the same office with which Mr. Salich was working. The conversation I related took place, as I recall, in March of 1938. [239] I have observed Mr. Salich in the office of the Naval Intelligence there at San Pedro when the offices were closed. There was an occasion when I was present in the office of the Naval Intelligence at San Pedro on a Saturday morning when the office was closed and when, upon my entry into the offices, I saw Mr. Salich there. I can't place the time now. It was in the latter part, I would say, around August or

September, 1937. The door was unlocked at that particular time. At that particular time it was customary for the office to be closed on Saturday morning. We moved to the new office some time in November, 1936. Mr. Salich had gone to work in August of 1936 over at the old office above the Cabrillo Theatre Building. The office of the Naval Intelligence, about September 15, 1937, consisted of two rooms. Both of them were about twenty-five by twenty. They had a connecting door. The officer in charge, in his room, are two safes, his desk and maps on the wall; and in my room I have my desk. filing cabinet and two other cabinets which contain supplies. One of the safes of the room of the officer in charge is about five feet tall, about four feet wide. It has two time locks, clocks, inside. When the office is closed at four o'clock they are set until the following morning at eight o'clock when the office is again opened. The officer in charge has access to the smaller safe. The officer in charge is Lt. H. D. B. Clayborne, and prior to that was Lt. Commander J. J. Roachefort. Mr. Salich did not have a desk in one of those two offices from September of 1937 until about the middle of December, 1938. There was a connecting door between the offices. There was a grill on the outside of the windows and a grill on the inside covered with a screen. When we left the offices at night they were locked and no one else had access to the building other than the two investigators, Mr. Salich and Mr. Stanley, Lt. Clayborne,

and myself. That includes all of the personnel of this particular office. There is a watchman over the building at night. He makes a patrol every thirty minutes. [240]

Q. At any time after September of 1937, were you ever present in the office of the Naval Intelligence, San Pedro, when the Defendant Salich was likewise present and the small safe to which the Commander of the Office had access, was slightly ajar? Now answer either yes or no.

To which objection was made by the defendant Salich upon the ground that it was immaterial and irrelevant and not within the terms of the indictment or bill of particulars. Objection overruled. Exception allowed.

Q. Now, do you recall approximately what date this was?

A. I would say it was either September or October. I couldn't give you the date.

Q. Of 1937 % A. 1937.

Q. Was anyone else present in the room where this safe was besides Mr. Salich?

A. I was there with Mr. Salich.

Q. And did you leave the room for any length of time?

A. I would say about four or five minutes.

Q. And when you returned, was anyone else present in the room besides Mr. Salich?

A. No one.

- Q. Did you observe who was in the room when you returned? A. Yes, Salich was there.
  - Q. Nobody else? A. Nobody else.
- Q. Did you observe the condition of the safe, the small safe, when you returned?
  - A. The door was opened much wider.
- Q. Did you have any conversation with Mr. Salich with respect to that situation? [241]
  - A. I did not mention it to him.

Defendant Salich moved to strike the testimony of said witness last objected to on the ground that there was no proof that Mr. Salich took anything out of the safe and no proof that his actions were other than as behooved a member of the Naval Intelligence Service in the course of the duties, and that the whole line of testimony was highly prejudicial. Motion denied. Exception allowed.

# Cross Examination

By Mr. Stone:

When I was describing the conditions of the office in September of 1937, and was describing those two rooms, that was the second office in the Federal Building. I don't remember the exact date when we moved into that office. I think it was the early part of 1937. That is the office which we now occupy in the Federal Building in San Pedro, and that is on the first floor. Our earlier office there had been on the second floor. We moved into that office in November, 1936, and stayed there until March,

1937. At the time Mr. Salich was first hired as an investigator for the Naval Intelligence Service we were in the old Cabrillo Theatre Building in San Pedro on the second floor where we had two rooms. It is that room that Mr. Salich first came into when he was first introduced into the office as a new member. Those rooms were about fifteen by fifteen, possibly a little bit bigger, one of them. The other was a little smaller, ten by ten. The main office was fifteen by fifteen, I mean the office of Commanding Officer Roachefort. I was in Lt. Commander Roachefort's office. In this other smaller office we had a desk and filing cabinet. It was more or less of a waiting room and a general catch-all. At the time that Mr. Salich first walked into the office as a new investigator I was working at my desk right across from Commander Roachefort. [242] There · were two entrances, one was into the hallway, and one was to another office, the branch hydrographic office. These doors were at angles to each other. Each door was approximately in the middle of each wall. Commander Roachefort's desk was alongside of mine, I was facing him. They were in the center of the room with their backs facing each other so that when I sat at my desk and Commander Roachefort sat at his we would face each other. Both of us were at our desks that day. Nobody else was in the room when Mr. Salich came in. He came in with Commander Davis, who was the District Intelligence Officer in charge of the main office at San

Diego, and he was stationed generally in San Diego where his office was. He came up to San Pedro occasionally to supervise the work. This was probably about ten o'clock in the morning. A Chief Yeoman does secretarial work. That includes . stenography, typing, bookkeeping, filing; general supervision of the office. I have had the rank about five years. I have been associated with intelligence work since March 23, 1935, stationed all that time in San Pedro. My pay check is a United States Treasury pay check, issued at San Diego, and it indicates the enlisted man's payroll. My pay check came from the Riegal, which is the office of the Supply Corps. The Riegel is a receiving ship. I came from the U.S.S. Pennsylvania. When I transferred from the U.S.S. Pennsylvania my accounts and records were sent to San Diego. The Riegel received my pay account. My records were retained by the Commandant in the Eleventh Naval. District, in the personnel office. At the time I was transferred to the San Pedro office I had specific orders from the Chief of the Bureau of Navigation. My orders read, From the Chief of the Bureau of Navigation to report to the Commandant of the Eleventh Naval District for further transfer to whatever duty the Commandant might want me to go to. When I reported to the Commandant, I was told to report to Lt. A. H. McCullom, United States Navy, who was then the officer of the Naval Intelligence Office in San Pedro. That order [243] was

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(Testimony of Roy Hanna.)

given to me orally. The usual practice when reports were turned in to the San Pedro office by Mr. Salich and Mr. Stanley, referring now to Salich, when he came to the office, he usually used my typewriter to write up his reports. Sometimes he wrote them. in duplicate; sometimes just on one piece of paper. These reports were turned over to me or were turned over to the officer in charge. Whatever information was distained in the report was digested and evaluated and placed in its proper place. The original report turned in by Mr. Salich was destroyed after we had taken the report from him. The report would be taken either by me or the officer in charge. I made an original, three yellows and one green. The green and one yellow was retained in the office. The other three were forwarded down to San Diego. The yellow was kept in chronological order, and was kept in my desk. The green was placed in the filing system in the files. I just had a lock on it and sometimes was kept locked, sometimes it was not. No orders were given to me in that regard. Mr. Stanley and Mr. Salich were the investigators. Previous to Mr. Stanley we had another investigator. Mr. Stanley and Mr. Salich did most of the investigating work. They were expected to carry out the orders that were issued to them by the officer in charge. The instructions they had received upon their employment were that they were expected to keep in mind the work which was being done and which had been done. To do

that they would sometimes refer back to the previous reports which they had turned in for continuity. If the information was insufficient in the yellow onion skin file which was kept in my desk, the information had to be obtained from the safe. They were expected to go to my desk for that yellow onion skin file occasionally to keep in touch with the work they had done in the past. My desk was kept unlocked for that purpose. When Mr. Salich and Mr. Stanley came to the office each day, they would turn to the yellow onion skin file and check on it each day as a matter of course. The Commander in charge of the [244] Naval Intelligence Service Office in San Pedro, myself, Mr. Stanley and Mr. Salich all had keys to the office. That was our headquarters for our work as members of the United States Naval Intelligence Service. They had orders to report tertain days to the office. If the office was locked for any reason, they were expected to use their keys to go in for that purpose. The office was kept unlocked from eight o'clock in the morning to four o'clock in the afternoon all days of the week, Monday, inclusive of Friday. They were not expected to come in on Saturday morning and type up a report. The orders never included that they had to report Saturday unless they were so specifically told. There were no orders that I know of that they were not to go to the office on Saturday. Occasionally I would come into the office on Saturday. The small safe was unlocked when Mr.

Roachefort or the officer in charge, Mr. Clayborne, was present. I don't remember what day of the week it was on the occasion to which I testified the small safe was open. It was around, September, October, of 1937. That was in the period when Commander Roachefort was in charge of the station. During the two years that Mr. Salich was connected with the Naval Intelligence Service the safe was opened every time the officer in charge came in and opened it. This may have happened three or four times a day, or it may have happened once a day. Commander Roachefort was not present at the time the occurrence to which I testified happened. He was out at the time. He only opened it and stepped out of the office when I was present. That had happened before. I did not say anything to Mr. Salich about this occurrence. I believe Mr. Salich had opened the safe. At that time I believed he had gone to the safe. What he was doing there, I don't know. The safe door was about four or five inches ajar when I left the room on that occasion. I did not examine the safe when I returned to the room. Mr. Salich remained in the room until about 10:30 or about 11:00 o'clock, about an hour and a half after I returned. Shortly after I returned to [245] the room, Commander Roachefort returned. He did not examine the safe in my presence.

Mr. Stone: Your Honor, I should like again to move to strike all testimony of Mr. Hanna with regard to this safe. The matter, as shown on cross

examination, Mr. Hanna didn't examine the safe. He had no reason to believe that Mr. Salich had taken anything from the safe. He said nothing to Mr. Salich about it at the time. There is no possible admission which can be drawn from such testimony, if that was the purpose of the Government in asking it, and I believe that is highly prejudicial and should be stricken, and the jury should be admonished to disregard it.

The Court: The motion will be denied, and in fairness to counsel, possibly the attitude of the Court should be explained in the presence of the jury.

The objections made, gentlemen, seem to the Court to go to the weight of the evidence rather than as to its materiality to the case. It is but an isolated item in possibly a long chain of proof. It certainly is no evidence that any papers were taken out of that desk. It apparently is not being introduced with that purpose in mind. It may seem to you to be evidence for the purpose of illustration to indicate the accessibility of these papers to the Defendant Salielf:

The motion to strike will be denied and an exception allowed.

(Witness continues) The conversation which occurred in March of 1938 between Commander Roachefort and Mr. Salich in regard to the defendant Mikhail Gorin, took place in the office on the first floor of the Federal Building in San Pedro. I was in the adjacent room where my desk was. In

the room of the commanding officer were Commander Roachefort, Mr. Stanley and Salich. I was alone in the outer room. I would say it was the first of the month [246] or the middle of the month, March, 1938. I remember the particular morning rather well. I had come to work at eight o'clock in the morning, the usual time. Commander Roachefort arrived between 8:30 and 9:00 o'clock. Neither Mr. Stanley nor Mr. Salich had come in at that: time. They came in together. They usually came in at nine o'clock or a little bit before. My duties every day are to be the chief clerk in the office, to take dictation, typewriting, filing. I don't know. whether I was engaged in those duties that morning or not; but I was in the office. I was sitting at my desk. Commander Roachefortehad looked through his mail first, which might take between ten or fifteen minutes; then when he got through with that he called Mr. Stanley and Mr. Salich in. They went in together, I was in and out while Commander Roachefort was looking through his mail. He had not been dictating answers to me. They went into the room, and I was sitting at my desk. I was not engaged in typing; I was reading a newspaper. I couldn't help but overhear everything that was said in there because it was very close. I would say that it would take no more than ten minutes to carry on that conversation. I had no particular reason to feel that something significant was going on in the room at that time. If the door was open

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(Testimony of Roy Hanna.)

I could hear all conversation that was going on in that room. The door was open in its complete entirety, way back against the wall as you open the door. The first to bring up the name of Gorin was Salich. He told Mr. Roachefort that he had contacted Mr. Gorin; that Mr. Gorin had made a proposition to him, and he wanted to know what Mr. Roachefort thought about it. I wouldn't say those were his exact words, but that was the general tenor of the conversation. I cannot repeat the exact words. When Mr. Salich first became an investigator of the Naval Intelligence Service, in August, 1936, referring to the conversation at that time, I do not remember the exact words, but 1 remember the tenor of the instructions that were given Mr. Salich. [247] Those instructions were given orally. The occasion was one which particularly fixed itself on my mind, because I had the same orders issued to me. On three occasions during the years I have been associated with the Naval Intelligence Service in San Pedro new investigators have been brought in and given those orders. Each one of them has strongly impressed itself on my memory, the same instructions were issued. The first one we hired was in the month of July, 1935. The second one we hired was the latter part of 1935. The third one was employed the early part of 1936. The instructions given to Mr. Salich was the fourth time that I have heard them after my connection there with that service. There were three previous to Mr. Salich.

There was a small coffee shop near the corner where I and the investigators from the Naval Intelligence Service used to go for a cup of coffee in the mornings occasionally. That was about a half a block from the office of the Naval Intelligence Service. Sometimes we went there frequently; sometimes we didn't. Sometimes I went alone; sometimes Salich went alone; sometimes Stanley went there alone. I don't remember any occasion when Mr. Salich and I went to that coffee shop and when in our conversation the name of Mr. Gorin was mentioned. I remember no occasion where I said to Mr. Salich that he would not care to lunch at this coffee shop after lunching in higher class places with Mr. Gorin: There was no such conversation in my presence.

#### Cross Examination

# Mr. Pacht:

The incident I related concerning the safe, took place in September or October of 1937. This was in the new Post Office building in San Pedro, in our office. The safe had been opened by Lt. Commander Roachefort, who was the officer in charge. I am without knowledge in regard to whether he had taken some papers out or put some papers in. I then left the office. Salich was there. [248] I was gone about four or five minutes. I have a very distinct recollection of having made an observation of the safe door before I left. It was open about fix inches. When I came back it was open about three-

quarters of the way. It was open about two feet, twenty-four inches, more when I returned than it was open when I left. If I said on direct examination that the difference that the safe door was open when I returned than what it was when I left the office was four to six inches, I was in error. It was about two feet more ajar when I came back than when I left. I was curious as to why it was opened so wide. It appeared suspicious to me. Knowing that Mr. Salich was the only man who remained in the room when I left, the thought entered my mind that Mr. Salich had been to the safe. I meant to say that I became suspicious that in my absence from the room Mr. Salich had been to the safe. My thought at that time was why he went to the safe. I didn't know whether he was in the safe. It did not enter my mind that he had taken some things out of the safe. I don't know what he was doing there, but I was convinced that he had done something which he shouldn't have done. Lt. Commander J. J. Roachefort was my superior officer at the time. I never made a report of that incident to him. I did not type a report of it. I did not tell anybody anything about it. I first told this in the District Attorney's office about a week and a half ago. That was the first time I had mentioned it to anybody. I told it to Lieutenant Clayborne. Mr. Harrison and Mr. Neukom were present. At the conversation which I related between Mr. Salich and Commander . Roachefort, Mr. Salich did not say that he had seen

Mr. Gorin pursuant to the Commandant's instructions. He said that he had contacted Mr. Gorin, and that Mr. Gorin had made him a proposition. Mr. Roachefort told him not to contact Mr. Gorin, nor accept any proposition, and that if he was to contact Gorin, that Stanley would be present. That is all I heard of the conversation. It took place about seven or eight [249] feet from where I was sitting at my desk reading a newspaper. I might have been working a crossword puzzle. I didn't say I was working a crossword puzzle, I said I might have been. I heard the entire conversation between Commander Roachefort and Mr. Salich. I couldn't have missed part of what was said. I am positive that what I have related is the only thing that was said. I distinctly recall that Mr. Salich did not say "I contacted Mr. Gorin as per your instructions, or as you told me." It might not have been said while I was occupied looking at this crossword puzzle or working it; it wouldn't have been said without me hearing it. No one told me that no such instructions were given to Mr. Salich. All instructions that Mr. Roachefort had given, he would relate them to me, or did it in my presence. Mr. Roachefort could have spoken to Mr. Salich out of my presence. I have never heard him give these instructions. I made a report of this conversation. I have not got it. It is missing. There was no number on the report. I put it in the file, in the big case file, the regular filing index. That was at the time of the occurrence. I

first missed it when I was instructed to look in the files for it. I don't remember the exact date, it was around the first week of February, 1939. I made just an original of this report and put it in the file under an alphabetical heading, Salich; under his name. I made this examination the first part of February. Mr. Clayborne was present. I did not misfile it originally.

### Redirect Examination

By Mr. Neukom:

The report that Commander Roachefort dictated to me subsequent to the conversation of March, 1938, was placed on the card and put in the index filing system. There was a file there that contained other matters or information with respect to the defendant Salich himself. That file was not there either. I tried to locate that file in the offices of the Naval Intelligence; we have searched everywhere and cannot find it. I have attempted to relate the [250] substance rather than the exact words of the conversation in March, 1938, when Salich, Roachefort and Stanley were all present in the office of the Naval Intelligence. All I heard that Salich had said was that Gorin had offered him a proposition, that is all I recall. With respect to this small safe, upon the occasion when it was opened about six inches and when I returned to the room open about twenty-four inches, in September or October of 1937, I did not have the combination of that safe.

Lt. Commander Roachefort had it. I don't believe that any of the investigators had the combination to that safe; It don't know. It is opened by a combination, by twisting of the dial. I have never seen Salich endeavor to open that safe. The larger safe which is in the office is where we keep the reports and cards. The one which was ajar the day that I stated is about four feet high and three feet wide. I stated that three reports are sent to San Diego, and two reports are kept in the office at San Pedro; that is, the finished reports. They were sent to the Commandant of the Eleventh Naval District at San Diego. Some of them were addressed to a particular office, some were not. These were the finished reports of the office. To explain, either of the men were sent out on investigation. They would compile the report and bring it to the office. They either wrote it out in longhand or one of them would sit at the typewriter and typewrite it. Sometimes a copy and an original was made on the green and yellow. This green was turned over to the officer in charge, and the yellow was turned over to me. Sometimes one of the investigators would write his reports at home. Whether he made copies of them at home, I do not know; but he would bring them typewritten to the office. The reports prepared by the investigator did not have a number assigned to them. The information contained in the report was turned over to the officer in charge, who evaluated and digested it, and either dictated the report or he

handed it to me to write up the report in its entirety as it was reported by the [251] investigator. And that was put in a final draft and it was given a number, a chronological number. The rough draft or the final report of the investigators, when the reports were completed, were destroyed. We put them in a wastebasket, and at the closing hour, at four o'clock, I would take it to the boiler room and I would superise the burning of these papers in the presence of the janitor. This procedure was taken over and done when Lt. Clayborne took over the office. This was the first part of June, 1938. Salich was working there at that time. Lt. Commander Roachefort, at the present time, is on the U. S. S. New Orleans, at Guantinamo Bay.

## Recross Examination

By Mr. Pacht:

Commander Roachefort dictated a general report of the conversation he had with Salich, of
what Salich told him with reference to being contacted or propositioned by Gorin. I transcribed it
on the typewriter. I made just the original. No
copies were made. When investigators made their
reports to Commander Roachefort, he digested them
and dictated his report, the numbered report, I
made an original, four yellows and one green. I
don't know when Salich got this proposition from
Gorin. The conversation took place in March. At
that time, if Mr. Salich, was sent out by his supe-

rior to see that John Jones was registered at the Ambassador Hotel, he would come back with a report. Normally it would be in writing. He would turn that over to Commander Roachefort, who would look at his memorandum and see what there was in it, and if he thought it was of any importance he would, in turn, dictate a report to me. His name would not necessarily be signed at the bottom of that report. Sometimes his name was left off, and sometimes put on. An original, four yellows and one green would be made of that report. The original and three yellows were sent to San Diego. The green copy was put in the filing system. The yellow was put where the other numerical yellows were. They were put consecutively. It was called a numerical [252] file. They were not sent to Washington, D. C. They were all sent to San Diego. I am not sure whether or not the San Diego office in turn transmitted a copy to Washington. Before any of those reports were sent out, they were given a number. In March of 1938 when Mr. Salich came in and told Commander Roachefort in substance, "L have contacted Gorin, and he has made me a proposition," he did not say what kind of a proposition He just told him that Gorin had made a proposition to him. He said Gorin was in charge of the Intourist, Inc., or Incorporated. Then Mr. Roachefort told him not to contact Mr. Gorin any more. He said he didn't want to have anything to do with the proposition. I don't know whether the proposi-

tion was one involving money. Money was not mentioned. I have related everything that was said on that occasion as far as I can remember. After the conversation took place, Commander Roachefort called me in the office and said, "I have a report I want to dictate to you." He dictated the report of the conversation that they had between Salich, Stanley and Mr. Roachefort as I have related it here. He told me to put that on the card, 5x8 card, a card index file, and told me to make but one copy of it. I filed it in the file which was kept in the big safe, that is the safe which had a time lock on it. I filed it away the same day, I know the combination to the time lock. I cause it to be opened and closed. I am not the only one; Lt. Clayborne can open and close it. We were the only ones. When I put this original away in the time safe in March of 1938. I didn't look for it again until the first part of February, 1939. In March, 1938, we had a file on Mr. Gorin, that had been gathered for some time prior thereto. I first discussed the matter with an agent of the Federal Bureau of Investigation about a week and a half ago. I had no discussion with anyone connected with the Federal Bureau of Investigation, shortly after the arrest of Mr. Gorin, about December 21. I did not talk to anyone connected with the District Attorney's office shortly after the arrest of Mr. Gorin. The first time I [253] discussed anything relative to Mr. Salich or Mr. Gorin or their respective activities was some week

(Testimony of Roy Hanna.)
or ten days ago, and that was with Mr. Neukom in
the District Attorney's office. Mr. Harrison was also
there, as was Lt. Clayborne and Commander
Zacharias.

#### Recross Examination

By Mr. Stone:

I was first introduced to Mr. Salich about the 15th of August, 1936, which is the first day I met him. I don't remember ever seeing him before. I would say he came in between 9:30 and 10:00 o'clock, somewhere like that. Lt. Commander Roachefort was there also. Mr. Salich came into the office with Commander Davis, and Commander Davis was the man who introduced me to him. There is no possibility of my being mistaken, and there is no possibility of my being mistaken about the instructions that were given to Salich. I know of no occasion when papers in the Naval Intelligence Service office were shown to one who was not a member of the United States Naval Intelligence Service. I don't believe I ever said anything to Mr. Salich about such an occasion nor have I heard of any such. I wouldn't remember the last time I saw the file on Mr. Salich which was kept in the office, but I remember the last time I looked for it. that was around the first of February, 1939. I never look at the safe file unless there is occasion for it, and I wouldn't remember just when I looked for it. There might have been an occasion to look for it at the time of Mr. Salich's arrest, but I don't remem-

ber looking for it at that time. It may be possible I saw it at that time. I have not seen it since that time. As clerk and Chief Yeoman in the office, I. handle the correspondence. I don't believe there was any correspondence relating to Mr. Salich at or about the time of his arrest. I would have to check the files in order to answer whether there was correspondence relating to Mr. Salich after the time of his arrest. If there was such correspondence, it would be filed under his name; in the same file in which this note was placed, I am referring ·[254] to the stenographic notes concerning which I testified yesterday of the conversation between Mr. Stanley, Commander Roachefort and Mr. Salich. I overheard the whole of that conversation and was paying attention to it. Mr. Salich did not say that he had contacted Mr. Gorin in response to Commander Roachefort's suggestion or order. Salich asked Commander Roachefort whether he should continue the contact with Mr. Gorin. Commander Roachefort did not say "That is a good contact for you." Salich did not speak to me at any subsequent time concerning Mr. Gorin.

## Recross Examination

By Mr. Pacht:

I read about Mr. Salich's arrest when it occurred; I read it in the newspaper. I read about Gorin's arrest when it occurred. Their arrest was a matter of some interest to me by reason of the fact

I was connected with the Naval Intelligence and Salich was connected with it. I did not discuss their arrest with Commander Clayborne. I occupied the same office that he did and saw him practically the whole of each working day. I did not discuss the arrest of Salich or Gorin with Commander Roachefort, and nothing was said between us about the fact that Mr. Salich, a man in our department, had been arrested for revealing secrets of the Naval Intelligence. I did not tell either Commander Roachefort or Commander Clayborne the incident about the safe door being ajar more than it should have been. Commander Clayborne did not discuss with me the matter of the arrest of Salich.

# H. L. STANLEY

being called as a witness on behalf of the Government, being sworn, testified as follows:

## Direct Examination

By Mr. Harrison:

I live at 245 South Oakhurst Drive, Beverly Hills. I am an investigator for the Naval Intelligence and have been so employed [255] since April 1, 1937. I am an officer in the Naval Reserves, and have been such for four years. Before that time I had no connection with the Navy. I worked out of the San Pedro during the entire time. My com-

manding officer was Lt. Commander J. J. Roachefort and Lt. Clayborne. I know the defendant Salich and first became acquainted with him the first part of April, 1937. I met him in the office of the Naval Intelligence at San Pedro. Since that time we were together five days a week from then on until December 10th, except on occasion when he or myself would be on leave. We were together in an automobile most of the time covering the territory from Laguna Beach to Santa Barbara. After working hours occasionally we would go out together. I visited at his place of residence every day practically. We had an apartment at 854 South Harvard Boulevard which we used jointly about ten or eleven months. It was his apartment. He lived in it and we used it to telephone from and conduct a lot of our investigations from there. It was centrally located to downtown while I lived in Beverly Hills and we would go to his apartment in the afternoons and discuss our business. He paid the rent for the first nine or ten months, and the last three or four months he got an apartment that was a little larger and I paid the difference between what he was paying and the new rent. We dined together very often during working hours. We did not have any regular working hours. I discussed Mr. Gorin with Salich. The first conversation I had with him concerning Gorin was shortly after I went to work for the Naval Intelligence. I would

say that was in May or June of 1937. Just the two of us were present.

Q. Just relate the substance of the conversation at that time.

To which question defendant Gorin objected upon the grounds that it was hearsay and antedated any at charged in the indictment or in the bill of particulars and that no conspiracy had [256] been proven and that it was immaterial and irrelevant for any purpose. Objection overruled. Exception allowed.

The Witness: He told me he had a Russian friend named Gorin who may be a good informant for us.

# By Mr. Harrison:

- Q. Was that the substance of the conversation at that time? A. Yes, sir.
- Q. Did you thereafter have any other conversations with the defendant Salich concerning Gorin?
  - A. Yes, sir.
    - Q. And about when was this?
- A. I believe it was in July of '37, when the Russian flyers flew from Russia to Oakland non-stop.
  - Q. Who was present?
  - A. Mr. Salich and myself.
- Q. Will you tell us the substance of that conversation?

Mr. Pacht: I make the same objection to that which I did to the previous question, and sepa-

rately make the objection on behalf of the defendant Natasha Gorin, and separately as against the defendant Mikhail Gorin, and for like reasons.

The Court: I understand the same objection is made, and the same ruling will be made, and an exception allowed as to the ruling.

A. He asked me, would I like to see the Russian flyers.

## By Mr. Harrison: ·

- Q. Is that all that was said?
- A. I told him I would.
- Q. What else was said?
- A. He said, "We will drive over to Gorin's house. They are over there." [257]

We drove to the house and went up on the porch and rang the bell and the door was answered by a girl who told us we could nt—

- Q. (Interrupting) Just a moment. You can't say any conversation that was said at that time. Did you see Gorin at that time?
  - A. No, sir.
- Q. And when I say "Gorin" I mean the defendant Mr. Gorin. A. I did not.
- Q. Did you thereafter have any further conversation with Salich concerning either Mr. or Mrs. Gorin?

  A. In December—
- Q. (Interrupting) Will you answer that question yes or no. A. Yes.
  - Q. And where?

- A. In the automobile.
- Q. When you say "The automobile," whose automobile was that?
  - A. Sometimes it was his, sometimes it was mine.
  - Q. And who was present?
- A. Salich, and a friend of mine from Porto Rico, who was visiting me, and myself.
  - Q. And you fix that date as when?
- A. It is either the last week in December of '37 or the first of January, '38.
- Q. Will you give us the substance of that conversation?

Mr. Pacht: May I make the same objection to that conversation which I did to the two previous conversations and the two previous questions, as to the defendant Mikhail Gorin? [258]

The Court: The objection as to Mr. Gorin will be overruled and an exception allowed.

### By Mr. Harrison:

- Q. Will you give us the substance of this conversation, Mr. Stanley?
- A. Salich asked me to ride out to Gorin's home with him.
  - Q., Is that all that was said?
- A. He may have given me the reason at the. time, but I don't recall it.

(Witness continues) We went out to Mr. Gorin's home at that time. That was at 461 South Ardmore, it may have been 451. I know it is in the 400

block on the west side of the street. When we got out there Mr. Salich asked me to wait in the car and he alighted and went up on the front porch and rang the bell. Just at that time Mr. Gorin was coming out the door and they walked down the path together and Mr. Gorin walked over and got in his car and Salich come and got in our car. I did not overhear any conversation at that time. Mr. Salich got back in the car with me and we went on our way. He said that Mr. Gorin had an appointment and couldn't-spend any time with him. Thereafter I had a further conversation with Salich concerning the defendant Gorin. It was the latter part of February or the first of March, 1938; in the automobile; just Mr. Salich and myself being present.

Q. Will you give us the substance of that conversation?

To which objection was made by defendant Gorin upon the same grounds stated in the objections to the series of conversations. Objection overruled. Exception allowed.

The Witness: Salich told me that he had dinner with Mr. Gorin the night previous and that Mr. Gorin had offered him \$30 or \$40 a month to turn over certain information from the Navy [259] Intelligence files to Mr. Gorin.

### By Mr. Harrison:

Q. Where did he say he had this dinner?

- A. Perino's on Wilshire Boulevard.
- Q. Was that all that was said by either you or Mr. Gorin at that time?
  - A. Mr. Salich?
  - Q. Mr. Salich?
- A. No, he asked me what my idea of the proposition was and I told him I didn't like it on account of the confidential nature of our business. I thought it was dynamite to play with it and I advised him to tell Mr. Roachefort, who was then our commanding officer.
- Q. What, if anything, did Mr. Salich reply to that?
- A. There wasn't much said on it from then on down to San Pedro.

(Witness continues) .Thereafter I had further conversation with Mr. Salich in which Mr. Gorin was discussed. That was about three or four days after the last conversation; in February or March, 1938. It took place in the automobile, there being present Mr. Salich and myself.

Q. And will you give us the substance of that conversation?

Mr. Pacht: And I object to it as to the defendant Mikhail Gorin for the same reasons assigned in my previous objections to other conversations just related by the witness.

The Court: The objection is overruled and an exception allowed.

The Witness: Salich said he had been thinking over the proposition that Mr. Gorin had given him, and he thought it would be quite all right to take this money. To the best of my knowledge at [260] this time, I told him at that time, "If you don't tell the boss about this, I am going to tell him."

By Mr. Harrison:

Q. What did Mr. Salich answer to that?

A. He sort of quieted down about it. I don't think he said much about it.

Q. Did he say anything further, do you recall?

A. No, I don't believe so. We drove on down to the office at San Pedro.

(Witness continues) There was further conversation at the office in San Pedro relative to Gorin. There were present Mr. Roachefort, Mr. Hanna and myself; Mr. Salich. I believe it would be around the first of March, the first week in March, '38. The conversation I had in the car in which Salich told me that he thought Gorin's proposition was all right, was the second conversation. That was, I would say, the first week in March. It was three or four days after the first conversation. Then I had a third conversation in the office of Mr. Roachefort, which occurred the same day as the second conversation.

Q. Now, will you give us the substance of the conversation and discussion that you people had in

the Naval Intelligence Office in San Pedro where all four of you were present, as you have indicated?

Mr. Pacht: And for the reasons which I assigned in my previous objections on behalf of Mikhail Gorin, I object to this question, as to him, for similar reasons.

The Court: The same ruling and an exception allowed.

The Witness: Mr. Roachefort was sitting at his desk in the room and Mr. Salich and myself were standing opposite his desk and Mr. Salich told Mr. Roachefort that he had been approached by Mr. Gorin with a proposition to turn over certain information to [261] Mr. Gorin.

# By Mr. Harrison:

Q. And what was said by either you or Mr. Roachefort in the presence of Mr. Salich?

A. I had nothing to say. Mr. Roachefort told Mr. Salich that he didn't want to contact Mr. Gorin again unless I was with him.

- Q. Did you have any further conversation after that with Mr. Salich concerning Mr. Gorin?
  - A. Yes, sir.
- Q. And about when was that in relation to the fourth one I think you have described?
  - A. That morning when we left the office.
  - Q. And who was present?
  - A. Mr. Salich and myself.
  - Q. Where were you?

A. In the automobile coming up from San Pedro.

Q. And what was said at that time?

Mr. Pacht: And for the same reasons heretofore assigned for my objections on behalf of Mikhail Gorin, I object to this question as well.

The Court: The objection is overruled and an exception allowed.

The Witness: Salich said that, "I won't introduce you to Gorin. He is too smart to have anything to say in front of you." He said, "Furthermore, he has offered me \$3,000 or \$4,000 to steal the code book out of the Japanese Consulate Office in Los Angeles."

The Court: Gentlemen of the jury, you are to ignore that statement with regard to the Code Book and the Japanese Embassy in so far as it affects the defendants Mr. and Mrs. Gorin. You are to take it into consideration in so far as it affects the defendant Salich. [262]

(Witness continues) Thereafter I had further conversations with Salich concerning Mr. Gorin, on several occasions, both in the apartment and the automobile. It would be within the next two months after the last; that would be the latter part of April or some time in May, 1938. I cannot fix the time of the first conversation in the apartment any closer. When I mentioned apartment, I meant Mr. Salich's apartment located at 854 South Harvard.

On several occasions I have heard him talk with Mr. Gorin, talk in Russian on the phone, and I would ask him who it was and he would say it was Mr. Gorin. I would say this occurred on three or four occasions. Salich said to me, after holding said conversations, that he had talked with Gorin. He wanted to meet him and he wasn't going to. I knew they were talking in Russian because I knew Mr. Salich spoke Russian very well. I didn't understand the language myself. These conversations were just a few minutes long. I heard him address someone over the telephone by the name Mikhail. I never heard him address anybody as Natasha. I had conversations with Mr. Salich relative to the confidential nature of the work that we were doing. I do not remember when we had the first conversation. I can recall one specifically; when Mr. Salich and myself were together in the automobile on the way to San Pedro: It would be the latter part of February or the first part of March, 1938." On our trip to San Pedro, Mr. Salich told me that he had dinner at Perino's with Mr. Gorin, and Mr. Gorin had offered him \$30 to \$40 a month to turn certain information over to Mr. Gorin. He wanted my opinion, and I told him I thought it was on account of the confidential nature of our work that he was playing with dynamite. I have had many discussions with Mr. Salich relative to the nature of our work. I have been present when statements

were made in the presence and hearing of Mr. Salich concerning the nature of the work that he was doing. This was during the year of 1938, up until June; we were meeting once a month—that is, I say "we", I mean the Navy Intelligence Unit [263] at San Pedro. There were present Mr. Roachefort, the Commanding Officer, Mr. Salich, Mr. Hanna, about fourteen or fifteen reserve officers who were attached to the Intelligence Unit, and myself. Commander Zacharias, Lt. Commander J. J. Roachefort, were the persons who made such statements at these meetings in the presence of Mr. Salich.

Mr. Stone: If your Honor please, may the record show simply that an objection was made on behalf of Mr. Salich, for the purposes of the record?

The Court: The objection may be entered, and overruled.

A. I don't believe I quite understand.

# By Mr. Harrison:

Q. I am referring to the statement that was made in the presence of Mr. Salich by either Lieutenant Roachefort or Commander Zacharias concerning the nature of the work that you and he were doing. Tell us what was said, and not what was impressed, the substance of the conversation or the statement that was made in the presence of Mr. Salich.

A. Well Mr. Roachefort told us that, due to the confidential nature of our work, and the work of the Naval Intelligence Unit, that we should not discuss anything that happened with any outsiders. One meeting I recall very clearly Commander Zacharias gave us a talk along the same lines, and he told us it was very much a confidential nature and, like virtue, intelligence work was its own reward.

(Before the witness was asked the question immediately hereunder there was shown to him for examination Government's Exhibit No. 3 for Identification.)

Q. Upon your examination I would ask you if any part of this document pertains to any investigation conducted by you?

Mr. Pacht: Just a moment. I object to that, first, upon the ground that the document speaks for itself and that this [264] witness may not interpret any language therein contained or give his opinion as to whether or not it refers to any investigation; secondly, that it is immaterial and irrelevant as to either defendant and calls for his conclusion or opinion.

The Witness: It does.

## By Mr. Harrison:

- Q. What part, if any?
- A. The last two paragraphs.
- Q. Did anybody assist you in making that investigation?
  - A. No, sir. I was alone.

Mr. Pacht: May it be understood, if the Court please, that my objection goes to this whole line of questions as to the witness' statement concerning any investigation relating to any part of this document?

The Court: Satisfactory to counsel for the Government?

Mr. Harrison: Yes.

The Court: It may be so stipulated. The objections will be overruled and exceptions allowed unless otherwise indicated by the court.

## By Mr. Harrison:

- Q. After you made the investigation, did you make any report covering such investigation?
  - A. Yes, sir.
  - Q. And what did you do with that report?
  - A. Turned it over to Mr. Clayborne.
- Q. Was. Mr. Salich with you at any time that you made such reports or investigations?
  - A. No, sir.
- Q. And was the contents of that report ever communicated by you to Mr. Salich?
  - A. No, sir. [265]
- Q. Do you know about when you made such investigation?

Mr. Stone: I now object to the materiality and relevancy and competency of this testimony.

The Court: The objection will be overruled, and an exception allowed.

The Witness: I do.

By Mr. Harrison:

Q. About when was it?

A. It was during the month of September, 1938. .

Mr. Harrison: I think that is all. Just a moment. I believe, if the Court please, for the purposes of the record it should be fully disclosed as to just what portion of this document is referred to, and on that theory I would like to ask the witness a question or two more, if I may.

The Court: You may.

## By Mr. Harrison:

Q. Mr. Stanley, referring to this again, do I understand that the portion that you claim was covered by an investigation and report made by you, covers the last two paragraphs, the first of which consists of two lines and one word, and the second paragraph of three lines, all in typewriting?

A. (Examining Document) (Government's Exhibit No. 3 for identification.) It would be four lines—

Q. (Interrupting) Four lines and three words?

A. Yes, sir.

Mr. Harrison: That is all.

#### Cross Examination

#### By Mr. Stone:

I was first employed by the United States Naval Intelligence Service April 1, 1937. Before that I was Chief of the Customs Patrol at San Diego.

Prior to that I was in Europe. I made a trip around the world in 1929, got back here in 1930, and went to work [266] for the Customs. Prior to that I was director of Personnel for the Julian Petroleum Corporation. For thirteen years I was connected with the Burns Detective Agency. I have had, altogether, twenty-six years experience as an investigator and gatherer of information. My stock ain trade is really information.

# Coss Examination

By Mr. Pacht:

I am in the Naval Reserve Corps; I am a Lieutenant in it, and have been such for about four years. I have not been connected with any other branch of the United States Service outside of the Customs Service. In that I was the Chief of the Border Patrol for seven years. I am assigned to. the Intelligence Unit of the Reserve Corps. With respect to Government's Exhibit No. 3 for identification, I meant to say with relation to the two paragraphs pointed out by Mr. Harrison, that in the course of my investigations I found out the substance of what is set forth in those two paragraphs. Then I came in and told Commander Clayborne about it; I made a written report about it. From that, written report Commander Clayborne. I think, drafted these two paragraphs. I saw the two paragraphs after they were drawn up. They

(Testimony of H. L. Stanley.)
were shown to me by Mr. Clayborne. I believe
it is that report there, Government's Exhibit No.
3 for identification which you are showing me.
Except for the Clerk's identification stamp, every
word that is on this Government's Exhibit No. 3
for identification was on the document which was
shown to me by Commander Clayborne. I believe
it was shown to me the third Friday in November,
1938, in Mr. Clayborne's apartment, at 4234 Eighth
Avenue, Los Angeles. There were present Mr.
Clayborne and myself.

## Redirect Examination

## By Mr. Harrison:

I saw the original report from which the information came that is set forth in the last two paragraphs, (of Government's [267] Exhibit No. 3 for identification). I believe it was this exact report that Mr. Clayborne showed to me. Referring to Government's Exhibit No. 3 for identification, at the time I had the conversation with Mr. Clayborne in the latter part of November, 1938, at his apartment, I was referring to a report with the same typewriting on it as this report has. If it is the same particular piece of paper, I do not know, but it contains the same information as is contained in this report. It was either this report or one identical.

Recross Examination

By. Mr. Pacht:

The paper I saw in Commander Clayborne's hands, and as which I have just been interrogated, had upon it all the typewriting and handwriting that is shown upon Government's Exhibit No. 3 for identification, except this stamp with the handwriting on it, and including the lines that I see on this exhibit. The report was in my hands while I was reading it: Commander Clayborne handed it to me with another paper, another letter. I have never seen it from that day in November until it was exhibited here in Court. It was never shown to me by Mr. Dierst of the Department of Justice; nor by Mr. Harrison or Mr. Neukom, or any other person connected with the United States Attorney's office, or Department of Justice, or Federal Bureau of Investigation. I have read the document, Government's Exhibit No. 3 for identification, and believe that everything that appears, either in typewriting or in longhand in writing and in lines on it was likewise on the document when I saw it in Mr. Clayborne's hands and when he showed it to me.

Whereupon it was stipulated by and between the respective parties that the witness for the Government,

## ANN SACKHEIM,

if called to the stand would testify that she is an employee of the Intourist, Inc., which maintains an office here at Los Angeles at 756 South Broadway. That is the corporation or office of which the defendant [268] Mr. Gorin is an employee. That the records of this organization, Intourist, Inc show that Mr. Gorin's salary during the whole of the year 1938 was in the amount of a total for each month of \$274.30, less a 1% tax of \$2.74, showing that Mr. Gorin, as a salary, received each month during the year 1938, \$271.56.

It was further stipulated that Intourist, Inc., is a corporation duly and regularly incorporated under the laws of the State of New York and authorized to do business in this state, pursuant to the filing of its certificate as provided by law.

### G. V. DIERST,

being called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

By Mr. Harrison:

I live in Los Angeles and am a Special Agent of the Federal Bureau of Investigation, located in Los Angeles, our office being at 810 South Spring Street. I have been engaged in this occupation since

April of 1935. Prior to that time I practiced law. My immediate superior officer at the present time is R. B. Hood; prior to Mr. Hood, Mr. Zimmer acted for about a month; John H. Hanson was the agent in charge up until the first of January, 1938. The local office of the Federal Bureau of Investigation is under the supervision of the Director at Washington, D. C. The director is John Edgar Hoover. I know the defendant, Mr. Salich, I first became acquainted with him on December 10, 1938. I met him first at his apartment at 854 South Harvard, in this city. At that time there were with me Agents McGee, Mulherine and Hare. They are agents of the Federal Bureau of Investigation. I went to the apartment of Mr. Salich in connection, with making an investigation concerning certain information which was alleged at that time to have been turned over to certain individuals. I went. there, I would say, approximately 11 or 11:30 in the morning. At that time I had a conversation with [269] Mr. Salich; the parties were present that I have named.

Q. And what, if anything, was said at that time by you to Mr. Salich, or Mr. Salich to you?

To which question the defendant Gorin objected on the grounds that no conspiracy had been proven or established, and that if it is in the nature of anadmission or confession, it took place after the termination of the alleged conspiracy, and that if

it is not an admission it is not alleged in the indictment or bill of particulars. Objection overruled. Exception allowed.

The Witness: When we first went into the apartment, Agent McKee and myself first entered, and we told Mr. Salich that we had come out there to talk with him, and we were making an investigation concerning certain information which he was supposed to have turned over to Mr. Gorin. Mr. Salich at that time advised that any information which he turned over to Mr. Gorin was information that was not prejudicial to the United States. He further at that time advised that he was familiar with the Espionage Statute and that information that he had turned over to Mr. Gorin he did not consider was in violation of the Espionage Act.

## By Mr. Harrison:

- Q. Proceed with any further conversations had.
- A. He further asked at that time whether he was under arrest and he was specifically advised that he was not under arrest, that at this stage the investigation was in its preliminary state, and that we were anxious to have his cooperation in order to get at the bottom of the investigation and find out just what had transpired. We requested that he come down to the office and talk the matter over with us, make a disclosure of any information that he had bearing upon this particular case.
  - Q. Did he make any answer to that request?

- A. He willingly assented. [270]
- Q. Just a moment. State not your conclusion as to what he said, but what he said in substance.
- A. In substance he stated that he wanted to cooperate with the Government and so that if possible, he could be cleared on it and it could be determined just whether there was a violation or whether there wasn't a violation. That is not verbatim, but that is the substance of the conversation that took place at that time.
  - Q. Anything further, any further conversation?
- A. The question of searching the premises was discussed. In other words, Mr. Salich was asked for his permission to search the apartment, and Mr. Salich at that time advised us that he realized that in police work—that he would be glad—he had been in police work for a number of years, and he would be glad to cooperate to that extent and advised that practically all of the papers that he had were contained in a briefcase, and that he would be glad to bring that briefcase into the office for examination.

Whereupon defendant Gorin moved to strike all that the witness had stated with relation to his conversation at Mr. Salich's apartment on the grounds that no conspiracy had been proven, and the further ground that if any conspiracy ever existed, it had already been terminated, and that any statement or declaration made by any of the alleged co-con-

(Testimony of G. V. Dierst.)
spirators after termination of the conspiracy was
not admissible against any other alleged co-conspirator. Motion denied. Exception allowed.

(Witness continues): Mr. Salich had agreed to go to the Federal Bureau of Investigation office. with me. We then went to the office; I mean by "we" Agent McGee and myself went down with Salich while the other two followed in a short time. I can't recall any specific matter of conversation with Salich between his apartment and the office of the Federal Bureau of Investigation. We may have talked, carried on a general conversation en route. When we arrived [271] at the office, myself, and Mr. Hanson and Salich sat down in one of the rooms, conference rooms of the office, and discussed the case in great detail. Mr. Hanson was the Agent in charge of the Lcs Angeles Division at that time. I should judge that it was shortly after noon, perhaps one o'clock or 1:30 when we arrived at the office. The three of us were present in the conference room, had a very lengthy conversation. Notes were made of the conversation by me. When we talked with him at first, as the conversation progressed, notes were made concerning what we con-, sidered the more pertinent details and after a conclusion of most of the interview the notes were rewritten and Salich, himself, sat down and went over these notes to make any correction of any

(Testimony of G. V. Dierst.)
errors that might appear. I have those notes with
me.

Whereupon the notes were produced and upon application of the Government marked "Government's Exhibit No. 4 for identification."

Q. Mr. Dierst, at the time that you are telling ous about, were any files of the Naval Intelligence Office exhibited to Mr. Salich?

To which question defendant Gorin objected on the ground that anything which the witness stated with relation to the conduct or declaration or statements of defendant Salich upon the occasion in question was inadmissible upon the ground that neither the acts, conduct or declaration of Salich at that time were in any way binding upon the defendant Gorin, and occurred subsequent to the termination of the alleged conspiracy, and constitutes hearsay. Objection overruled. Exception allowed.

A. They were.

Q. And just describe, generally, without stating any of the contents, the number of the files so exhibited.

A. There were two volumes of files exhibited totalling [272] approximately 1100 to 1200 reports of thin yellow onionskin paper.

Q. And were those—what was done with these two volumes of reports?

A. These two volumes—you mean where are they now, or what was done at that time?

Q. What was done at that time with the two volumes of the files? Will you give us a description of the papers that were in the files?

A. A physical description of the papers in the files were, that they were on regular-sized letter sheets, thin yellow onionskin, and were carbon copies of typewritten reports, numbered chronologically.

Q. Where did you obtain these two files that you exhibited to Mr. Salich?

A. From Lieutenant Clayborne, or the Navy Intelligence Service.

Q. And was Lieutenant Clayborne present when they were exhibited to Mr. Salich?

A. He was not present when they were exhibited.

Q. What did you or Mr. Salich do with these reports at that time?

A. Mr. Salich and I sat down side by side; Mr. Salich leafed through the reports, read them over, that is, he started with the first volume, and we started at some random point; from there on he leafed through them and, as he read them over, he would make a comment in connection with each individual report as to whether he had turned it over to Mr. Gorin, or whether he had not turned it over to Mr. Gorin, and notes were made by me at the time referring to those reports by number, the

number appearing in the upper lefthand corner of the report.

Q. Now, what was done with the reports that he identified? [273]

Mr. Pacht: Just a moment, Mr. Harrison, if you will pardon me.

May it be understood, if the Court please, that I have a continuing objection to this whole line of interrogation as to what was said by Mr. Salich, what was done by Mr. Salich, at this particular interview that the witness is relating, at which these reports were exhibited and comments alleged to have been made?

The Court: The objection as to statements during this conversation will be entertained on behalf of the defendants Gorin, and will be denied, and an exception allowed.

Mr. Pacht: And what disposition is your Honor making of my objection as to the conduct of Mr. Salich? Is your Honor overruling that objection as well?

The Court: I am simply ruling upon the matter before the Court that is, the question of this conversation.

Mr. Pacht: I understand that the witness is relating also certain conduct on the part of Mr. Salich, and I am likewise objecting to whatever Mr. Salich's conduct was at that time, or, rather, Mr.

Dierst's relating of it, and for the like grounds urged.

The Court: That will be likewise overruled and an exception allowed.

The Witness: The reports that he identified as being reports that were turned over to Mr. Gorin were withdrawn from the Navy Intelligence file, that is, the two volumes, of files.

## By Mr. Harrison:

- Q. Where are those reports now?
- A. The withdrawn reports?
- Q. Yes.
- A. The withdrawn reports I think you have them there.
- Q. I show you—I will ask that this be marked, one of them 4 and the other one 5, for identification.

The Clerk: 5 and 6. [274]

The Court: 5 and 6.

Mr. Harrison: 5 and 6.

The Court: They may be so marked.

(The reports referred to were received and marked "Government's Exhibit No. 5 for identification" and "Government's Exhibit No. 6 for identification," respectively.)

## By Mr. Harrison:

Q. I will show you first Government's Exhibit No. 6 for identification, and ask you if you recog-

nize that as anything that you have seen before?

- A. (Examining document) That is.
  - Q. And what is it?
- A. These are the reports examined by Salich, contained in Volume No. 1 of the Navy Intelligence reports, that he selected as being turned over to Gorin or, in accordance with the various comments that he made, which I have notations of on the notes here.
- Q. Mr. Dierst, will you explain for the benefit of the Court and jury, just the method by which those reports were removed from the general files and the taking of the notes?
- A. As Mr. Salich was going through the reports, he would read them over, and we would take each of the individual reports, and he would say, in connection with it, "I turned this one over," or "I didn't turn this one over," or "I gave the highlights on this one," and so on through numerous reports.

And as to any of the comments which he made concerning reports which he stated that he turned over, or that he related information to Mr. Gorin that was contained in those reports, I made notes on.

The negative information I did not make notes on.

Q. And you have those notes available?

A. I have.

- Q. Now, I will show you Government's Exhibit No. 5 for [275] identification, and ask you if you recognize it?
  - A. (Examining document) I do.
  - Q. And what is it?
- A. These are copies of reports that were removed from Volume 2 of the Navy Intelligence files.
- Q. And you say they were removed by yourself, and after it had been identified by Mr. Salich?
  - A. After it had been identified by Mr. Salich.

I might explain, in connection with the reviewing · of these various reports; that there was more or less a break in the period of time. When we first talked the matter over with Mr. Salich, when the Navy Intelligence reports first arrived, which was probably about an hour and a half after Mr. Salich was in the office, the reports-it was just taken at random from Volume 1-and a number of reports was reviewed by him, and those comments were made. Those are the ones we have already previously discussed. Later on there were certain reports that he was asked specifically about, as to whether he had turned them over, and in connection with that he made certain comments on them. which are also contained in the notes. Also, he was asked to select certain reports that he had made or turned over to Gorin on the last date of contact that he had had with Gorin. So that the reports con-

tained in this Exhibit 5 will be of that nature. But they were all examined and read by Mr. Salich and he made the respective comments concerning them.

Q. Now, referring to the comments relative to these reports, I will ask you to state which report he identified first, what number?

A. The first report was 570 that he identified.

[276]

Q. And what comments, if any, did Mr. Salich make relative to that report?

A. He said he remembered he gave that to Gorin.

Mr. Pacht: We are still, I take it, operating under the understanding that on behalf of the defendants Gorin we are objecting to all of these statements, all of these declarations, and anything that Mr. Salich may have said or done upon the occasion of this interview, upon the ground that if there has been, or have been a conspiracy, that it had terminated and that it is in no way binding upon either the defendant Natasha Gorin or the defendant Mikhail Gorin; and, further, that there has been no proof whatever of any conspiracy thus far made.

Of course, I understand your Honor's theory upon which your Honor is admitting the evidence on the last objection.

The Court: Yes.

I might say that my understanding of the objection is made on the ground indicated to all of the

sayings; doings and occurrences at this interview between the witness and his associates and Mr. Salich.

Now, the Court is admitting this information on this theory, that it is the act, that these things are the acts, deeds, and that these occurrences are in connection with the acts and deeds of one of the co-conspirators during the existence of the conspiracy and before it is terminated.

Naturally, if one had their choice, they would have the conspiracy firmly established before any evidence was introduced, in other words, the corpus delicti proved.

We would also have the termination date of the conspiracy determined, and that evidence would be taken of occurrences between these two dates.

As I have previously indicated, in actions of this kind, or indictments of the type indicated here, that is frequently almost impossible. Some of these questions may have to be left to the [278] consideration of the jury.

Therefore, the offer of proof is left, to a great extent, to the discretion of the judge, and the judge is exercising that discretion in favor of permitting the evidence to go in this way, with the understanding that he may grant motions to strike portions of it at some future time during the trial upon application of counsel.

Mr. Pacht: And it may be understood that my objection goes to all of these questions?

The Court: And that your objection goes to all of these questions, and that an exception is allowed.

Mr. Pacht: Now, your Honor, particularly on the question of the termination of the conspiracy, which is one of the grounds of my objection, may I ask the District Attorney if it is his contention that any acts whatever in furtherance of the conspiracy were done or performed by Salich subsequent to the date of this interview, or subsequent to the date when he was taken into custody at his apartment, or, as Mr. Dierst has stated it, voluntarily came down to his office?

Now, if no further acts were done or performed subsequent [279] to the first interview that Mr. Dierst had with Mr. Salich at his apartment, on the morning of the 10th of December, then manifestly any act that Salich performed or conversation he had or declaration or admission which he may have made to Mr. Dierst at the Government's office, I submit is in no way binding upon Mikhail Gorin.

The Court: Well, it is my understanding that the Government proposed to prove that the conspiracy did not terminate until a subsequent time. Am I correct?

Mr. Harrison: It is our theory, if the Court please, that it was not terminated until the final arrest, and, as far as we know, it may still be in existence.

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The Court: Very well. The objection will be overruled.

Mr. Pacht: Exception.

The Witness: 570.

Q. 570? A. Yes.

Q. Where do you find that number on such report?

A. It is in the upper left-hand, corner of the report.

Q. And is the last page in Volume 1?

A. It is the report that is on the last page in Volume 1, or Exhibit 6 of the Government's exhibits.

Q. Now, what was the next report that any comment was made upon?

A. The next report on which comment was made was report No. 565.

Q. And what comment, if any, did Mr. Salich make on such report?

A. In connection with No. 565, he stated that he might have given this one. He wasn't sure.

By Mr. Harrison:

And what was the next report that was identified?

A. The next one was No. 560, and in connection with this report he stated that he had given the high-lights on this report concerning Japanese boats.

Q. Any other comments?

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(Testimony of G. V. Dierst.)

- A. No other comments.
- Q. What was the next report upon which comment was made?
  - A. The next report was 554.
  - Q. And what comment, if any, was made?
- A. In connection with report 554, I merely have the name contained that is referred to in the title of that report, so in connection with that report I am not in a position to say as to just what he did.
- Q. Will you proceed and go on down through the various reports that were identified at that time by Mr. Salich and comments made on each?
- A. In connection with report 552, he stated that he gave the highlights concerning the information in that.
- Q. When he said he gave the highlights, did he say to whom he gave the highlights?
- A. Yes. In each one of these connections, when I refer to it, he stated that he gave this information, or the contents of the information in these reports, to Mikhail Gorin.
  - Q. You may proceed down through the reports.
- A. The next one was report No. 551. He stated he was not sure as to whether he had given this information.

Mr. Warne: May we understand that this is the order in which they were discussed with Mr. Salich at that time?

The Witness: That is correct. Report No. 548, he stated that he gave to Gorin. Report No. 546,

he stated that he gave to Gorin. Report No. 541, he stated that he was not sure whether he had. given this to Gorin; No. 540, he stated that he might possibly have given that one to Gorin. 536, he stated that he gave to Gorin. 535, [281] he stated that he gave to Gorin; 534, he stated that he gave to Gorin; 532, he stated that he mentioned the contents contained therein to Gorin; 530, he stated that he gave the information to Gorin; 529; he stated that he gave the contents of the first paragraph in that report to Gorin; 528, he stated that he gave to Gorin: 525, he stated that he gave to Gorin; 522, he stated he wasn't sure, but he might possibly have given this information to Gorin; 519, he stated he gave to Gorin; 514, he stated he gave to Gorin; 507, he stated he gave to Gorin; 505, he stated he gave the information to Gorin; 504 he gave to Gorin; 503 he gave to Gorin.

The Court: You mean that he stated that he gave it to Gorin?

The Witness: He stated he gave the information, or the contents contained in that report, to Mr. Gorin.

The Court: That same statement is applicable to the previous one?

The Witness: That is applicable to all of those where I mentioned that he gave the information to Gorin. By that, he stated that he gave the contents of the information, in some instances he stated

that he gave it to him orally, or in some other instances he gave it to him in written reports, that he could not select in each instance that I am relating here whether he gave oral information or whether he gave written information, unless it is otherwise qualified.

Mr. Pacht: May I clear up a matter that I don't quite understand?

The Court: Yes. I would like to have the witness indicate where his notes reveal that the report itself was given to the defendant Gorin, rather than the information.

The Witness: In none of these reports did he state that the actual physical report was turned over to Mr. Gorin. He stated that he gave the contents of the report or the information contained in the report to Mr. Gorin. [282]

Mr. Pacht: Your Honor has asked the question I intended to ask.

Mr. Warne: May I inquire as to the alternative? Did he state that he did not give the report? The witness has said that he didn't say that he had given the physical reports; may I inquire of the witness if Mr. Salich at that time said that he had given any of the physical reports?

The Court: Did he state during that conversation that he had not given the physical report to Gorin?

The Witness: He stated that he did not give the actual physical report to Mr. Gorin. He did, how-

ever, state in some instances, on reports that will be later mentioned, that he gave the information to Mr. Gorin in writing. As to whether it was a verbatim copy or not, he didn't state.

#### By Mr. Harrison:

Q. You may proceed.

A. 495 stated that he gave information to Gorin from that report. 489 he gave to Gorin. 487 is not—he is not sure whether he gave it to Gorin. 482 he gave to Gorin. 480 he gave to Gorin. 479 he gave to Gorin. No. 478 he stated he was not sure whether he had given this to Gorin. On 477 he stated that he gave that one to Gorin. 472 he stated he gave to Gorin. 469 he stated he gave to Gorin. 465 he stated he gave to Gorin. 439 he stated he gave to Gorin. 435 he stated he gave to Gorin.

Mr. Pacht: May it please the Court, may we have the stipulation with Mr. Harrison that when the witness says that Mr. Salich gave the reports to Mr. Gorin—that the witness means by that that Salich told him that he gave either the substance. or some memorandum of the reports, but not the report itself, or a copy of it.

The Witness: That is correct. [283]

Mr. Harrison: I believe that, if the Court please, rather than stipulate, I will bring it out by examination as to just—

The Court (Interrupting): I think we may consider that the question has been asked, and the wit-

ness has answered in the affirmative, and that will save the trouble of going over it again.

The Court: Do we understand, Mr. Dierst, that unless you state otherwise, that you are meaning by the words "gave to Gorin," or words of similar import, that the substance of the report was given to Mr. Gorin orally, according to Mr. Salich's statement?

The Witness: Given to Mr. Gorin orally or written. However, Mr. Salich could not designate those which he gave orally and those which he gave written.

The Court: And if any other situation prevails, will you so specifically indicate as to a particular report?

The Witness: I will.

## By Mr. Harrison:

Q. Mr. Dierst, was the expression used, he gave the substance, or just what was the language used in that respect?

A. He gave the substance or the contents of the information contained in the report, which we have referred to in the respective reports.

Q. Now, Mr. Dierst, in your testimony Friday—for the benefit of counsel, that may be found on page 382, line 19—you stated, in effect, that he selected certain reports that he had made or turned over to Gorin on the last date of contact that he had had with Gorin. I will ask you if Mr. Salich

(Testimony of G. V. Dierst.) at that time stated to you when he had had the last contact with Mr. Gorin.

'A. He did. He stated that the contact at which he had given those reports was on November 25th, 1938, the day after Thanksgiving. However, later in the evening he mentioned that he had seen Mr. Gorin on the night of December 9th, but he did not give any reports to him on that evening. [284] Q.. Will you give us the substance of what he said relative to his contact with Mr. Gorin on No-

vember 25 of 1938?

A. Mr. Salich advised me that he had met Mr. Gorin on Hollywood Boulevard, on the day after Thanksgiving, which was November 25, 1938, and at that time turned over to Mr. Gorin certain reports which Mr. Salich selected for me from the Naval Intelligence files as reports which he had turned over; and also that Mr. Gorin on that evening had paid him \$200.00. The reports that Mr. Salich selected as having been turned over to Gorin on that evening are in my notes.

Referred to in Government's Exhibit No. 4, for identification? A. That is correct.

Q. Did Mr. Salich at that time tell you in what form or what type of money or whether it was money or not, actual cash, that he turned over to him on that day?

A. It was-Mr. Salich told me it was in cash, and furthermore, that the \$200 which he had in his

possession at that time, which were in \$50 bills, was the money which Mr. Gorin had turned over to him on the night of November 25th.

Q. What do you mean by "at that time"?

A. Which Mr. Salich had in his possession on December 10, during the conversation at the office.

Q. Thereafter did you ascertain whether or not Mr. Gorin did have four \$50—or Mr. Salich did have four \$50—bills in his possession?

A. Mr. Salich had four \$50 bills in his posses-

Q. Now, Mr. Dierst, referring to Government's Exhibit No. 4 for identification, then was that written up?

A. That was written up on the evening of December 10, 1938.

Q. And these conversations that you have told us about, [285] and also the identification of these various reports, was that at the same time, before or after?

A. They all occurred on December 10th.

Q. At that time, as I understand it, you made a rough memorandum?

A. That is correct.

Q. And those are the memorandums that you have been using to refresh your recollection?

A. That is right..

We first made a pencil memorandum and after I had the pencil memorandum made up, or I took

down the notes from time to time during the conversation, then I went over it and rewrote the notes in ink while Mr. Salich was over at another desk at a typewriter preparing the statement. After he got through with the statement, or after I had my notes prepared, he came over and asked me to review them. We sat down together and reviewed them, and he made certain corrections in the notes with his own handwriting.

Q. Calling your attention again to Exhibit 4 for identification, is that memorandum in your own handwriting?

A. This is a memorandum in my own handwriting with certain corrections made in it in the handwriting of Mr. Salich.

Mr. Harrison: At this time, if the Court please, we desire to offer this statement in evidence.

The Court: Gentlemen of the jury, it is stipulated between the parties that the Government's Exhibit No. 4 for identification may, be now admitted in evidence as to the defendant Salich, but is not applicable to the defendant Mikhail Gorin, and you are instructed to disregard this exhibit in considering the matter as to the two defendants Gorin.

Whereupon the document referred to was received in evidence and marked "Government's Exhibit No. 4."

Mr. Stone: I think the record should show that we do not [286] consider that Mr. Dierst's state-

ment refers to matters with respect to the national defense, and for that reason I would like to have the record show an objection in that regard.

The Court: The record may show the objection.

It is overruled and an exception allowed.

Whereupon the witness read the statement, Govment's Exhibit No. 4, the same reading as follows:

# GOVERNMENT'S EXHIBIT NO. 4

Notes of G. V. Dierst of statements made by Hafis Salich, 12/10/38, and reviewed and corrected by Salich, signed G. V. Dierst. While subject was on Berkeley, Calif., P. D., he was acquainted with one O. R. Griffin who was a former member of Berkeley P. D. and Griffin knew Mr. Troyanovsky, the Russian Ambassador to U. S. Griffin thru Troyanovsky met Nicholai Aliavdin, Vice Consul for Russia. Griffin introduced Salich to Aliavdin, this being in the latter part of 1935. During the latter part of 1935 and 1st part of 1936 Salich saw Aliavdin once or twice. Salich came to L. A. in Aug. of 1936 to take present job. Some time during winter of 1936-1937 Aliavdin looked up Salich in L. A. & saw him 3 or 4 times when Aliavdin was recalled to Russia about the summer or spring of 1937. He had been vice consul at San Francisco and was transferred to L. A. Aliavdin approached Salich and requested information concerning Jap

activities or the Jap Consulate and was turned down. At this time Salich advised Roacheforte of Aliavdin's request.

In Dec. '37 or Jan. '38 Salich met Mikhail Gorin, Gorin having a letter of introduction from Aliavdin. Gorin brought this letter to Salich's apartment at 3333-W 4th St. and Salich, being out, Gorin left word with Salich's wife that he desired to see Salich.

The following hight Salich contacted Gorin at his residence, 451 South Ardmore St. And they went out together. While they were out, Salich's wife, with whom Salich had been having trouble, came to Gorin's house, forced her way in and searched the front room [287] for Salich, Mrs. Gorin being the only person home. Gorin told Salich that they had investigated his folks in Russia and found that they were alright and that they felt that Salich would be able to help them. He stated that they wanted information about the Japs and that Russia was friendly with U S and did not want to do anything that would in any way jeopardize that relationship. Salich told him that no information he could obtain about the Japanese would help them, but Gorin explained that there was always a possibility that in event of trouble between the Russians and Japanese that such information might be of assistance and they were interested in Japanese and their

international activities. They had 2 or 3 meetings and about this time Salich was having marital trouble, he and his wife separating, so Gorin said he would help him out and gave him \$200 more or less as a gift and to help him out. Thereafter from time to time Gorin gave Salich sums of money, generally about \$200 at a time and totalling about \$1700, the next to last payment being \$500 in Nov of 1938 when Salich made a property settlement agreement with his wife. He had been paying her \$125 per month and the amount received from Gorin just about took care of the alimony.

Information concerning Japanese activities were furnished to Gorin from time to time, and it was specifically understood between Salich and Gorin that no information would be furnished concerning U.S. It being felt by Salich and Gorin that the Japanese activities were a matter in which U.S. and Russia were both interested and that exchange of information about them would mutually benefit U.S. and Russia.

Salich and Gorin had no specific meeting place, but would get together about every 3 to 5 weeks at places mutually agreed upon. Sometimes Salich would phone Gorin and vice versa. The information was turned over to Gorin both orally and written and Gorin would take notes on oral information. [288]

Timofeev was vice consul until recently but Salich never met him and never had any dealings with him.

Gorin told Salich on one occasion that he had had an American employed, but had fired him because he was unreliable, and he also said that a similar check was being made on Japanese activities in San Francisco and Salich saw part of a typewritten report about. Ted Yasunaga, or Yasukawa or Yasaqawa and something about the subject being a graduate of Galileo H. S.

Gorin always claimed that his superiors felt that there was more in the navy intelligence about the Japs than they were getting and particularly about who the real Japanese spies in U S were, but Salich insisted that Gorin was getting all the information available concerning the Japs. Gorin also stated at one time that Moscow was dissatisfied with the information they were getting and felt that Salich could get more information. He also stated that they felt that something of real interest to the Russians might turning about the Japs in the future. He also inquired at one time if Salich had any Jap informants who could be developed to furnish Gorin information, but Salich advised him that it would put his informants in a ticklish position and refused to give him any

was no object and said he would even pay double what Salich was getting. At another time Gorin told Salich that if he, Salich, got any extended leave, that he, Gorin, would see that Salich got a trip to Russia, advising Salich that the Russian Covernment as a part of their propaganda program paid for trip to Russia of members of certain organizations and that it could be arranged for Salich to make one of these trips.

Salich stated that when Gorin first approached him that he Salich had talked the matter over with Roachefort and Roachefort told him to see what Gorin had to offer. He told Roachefort at the time of the offer that Gorin had made. [289]

Salich when first approached told Gorin that it was out of question for he, Salich, to do any independent investigation and that all information furnished would have to come as a result of his investigation with the Navy Intelligence. Gorin also told Salich that Moscow felt he, Salich, was not doing anything wrong as there was a mutual cause in obtaining information about the Japs.

In going over the various reports of the Navy Intelligence records with Salich, he stated that he furnished information from the following

reports to Gorin on their last meeting which was the day after Thanksgiving last, on Nov. 25, 1938.

#1145

#1139

#1133

#1132

#1130

#1129

#1116 (This report was not furnished).

He asked Gorin about Captain Bakesy and Gorin said he knew Capt. Baksey as he had come to Gorin's San Francisco office. Salich asked Gorin of Bakesy, because he suspected that Bakesy may have been employed by him.

In going over other reports in the Navy Intelligence files Salich made the following comments about the following numbered reports.

#838. He gave the information in this report to Gorin because it concerned the Japanese and if there was a communist among the Japs, then Gorin could contact him direct for information and this would be working towards a common interest. This report was given to Gorin in writing.

#841. He gave this information to Gorin, but does not know whether it was written or oral.

#843. Denies knowing anything about this or giving [290] information to Gorin.

#849. Gave names of Simons & Rayburn to Gorin and asked him whether these parties had been working for Gorin. Gorin had mentioned a Simons in San Diego that was supposed to be studying Japanese and Salich mentioned these names to see if Rayburn and Simons were working for Gorin and doing sabotage work.

#854. No specific recollection about this but that he might have mentioned it to Gorin. Salich states that they had talked about the article in Liberty Magazine discussing Japanese torpedo boats which were supposed to have been converted into fishing boats.

#859. Salich did not furnish Gorin with the address of Simons.

#861. No specific recollection.

#889: Salich states he did not remember furnishing Shively's name to Gorin.

#897. Salich gave this information to Gorin, but does not know whether it was written or oral.

#967. Salich merely gave Gorin the name of Hilda Cary and some of her personal history, such as the fact she had been married to a Mexican, also her address. It was then up to Gorin to make a contact with her if he so desired. (May have given a written report or copy).

#973. Salich gave Gorin information about Louis Ritchie as a possible Japanese py, because he was capable of doing anything for the Japanese and might play both sides.

#1066. Salich and Gorin had agreed that if they ran into anything against the U. S., that they would work together and so Salich asked Gorin about Hillman and Kovac and Gorin said the Russians had no known communists working and that this was all a lie.

Other reports mentioned by Salich to Gorin were as follows: [291]

#1152—no comment.

#1110—the following comment appears after that: "told to Gorin, orally, but did not mention ships.

#1104 mentioned to Gorin.

#1088. Told about Herman Schwinn—when this was mentioned to Gorin he told Salich to lay off the Germans as Moscow was not interested and that this was covered by a separate division.

#1081. Mentioned to Gorin, may have given written report.

o- #1070 «

#518 is information received from Gorin.

#403 is information received from Gorin.

Salich feels that at least \$100 of the money he received from Gorin was spent on navy business.

(End of Government's Exhibit No. 4.)

By Mr. Harrison:

Q. As I understand your testimony, Mr. Dierst, after you had finished making this memorandum Mr. Salich went over it with you?

A. He did.

Q. And made certain corrections?

A. He made certain corrections, yes.

Q. And those corrections appear on Exhibit No. 4 in a different handwriting from the general text?

A. That is correct.

Q. You stated that while you were making up this memorandum that Mr. Salich sat down to a typewriter and wrote up something?

A. He did.

Q. And after he had completed the typewriting, did he hand you anyting?

A. He did.

Mr. Harrison: I will ask this to be marked for identifi- [292] cation, Mr. Clerk.

(The document referred to was marked "Government's Exhibit No. 7 for identification.")

## By Mr. Harrison:

Q. I am now showing you Government's Exhibit No. 7 for identification, and ask you if you recognize that document.

A. (Examining document) I'do.

Q. And what is it?

A. This is the typewritten statement which Mr. Salich typewrote while I was preparing the notes which I just read.

Q. And did Mr. Salich sign that document?

A. He signed it the following day.

Q. And in whose presence?

A. He signed it in the presence of Mr. Hanson and myself and Mr. Miller.

I might say, in connection with that, he had already, signed the statement on Sunday morning prior to my arrival at the office; that I went in to where he was and asked him whether he had signed the statement, showed it to him, and he told me that he had, and acknowledged that that was his signature on the bottom, and it was his signed statement, that he had voluntarily signed it.

Mr. Harrison: If the Court please, we now offer this in evidence against the defendant Salich only.

Mr. Stone: May the record show the same objection in regard to this statement, your Honor, that we made in connection with the other one; that it does not concern matters affecting the national defense.

The Court: The objection will be entertained, overruled, and an exception allowed.

The document referred to was received in evidence and marked "Government's Exhibit No. 7."

Whereupon Mr. Harrison read said exhibit to the jury [293] said Government's Exhibit No. 7, reading as follows:

### GOVERNMENT'S EXHIBIT NO. 7

The following is account of the various events that led up to this case and my sincere and honest story as to what transpired during my relationship with Gorin:

Gorin came to my house at 3333 West 4th Street, Los Angeles, during the fall of 1937 and talked to my wife Velma through the apartment house switchboard. He stated to her that he had a letter for me from Aliavdin.

Eventually I contacted Gorin at his house one evening after having had a violent quarrel with my wife. She threatened that she would follow me, so Gorin and I left his house immediately to go somewhere for a cocktail. Velma arrived there shortly thereafter and created quite a scene with Gorin's wife, demanding entrance and looking for me. According to Gorin as told him by his wife, Velma nudged her way in the house and acted quite obstreperously. During that meeting Gorin stated that his government was very much interested in obtaining information concerning the Japanese in this area and emphasized that they were quite friendly to USA and that they wanted no information of any kind that would be considered against the best interests of this country. He suggested that, if necessary, he was quite prepared to pay money to which I answered negatively explaining that I would not consider

asked me to think the matter over, and that we would meet again for lunch sometime soon. Accordingly we had lunch together at Perino's one day, the outcome of which was that I again insisted that I could not consider working for him and accept any money but that if at any time I came into possession of information that concerned Japanese activity against the USSR I would let him know.

In the meantime, after many violent squabbles and [294] quarrels with my wife we separated and in February 1938 I moved to my present address. I agreed to pay her \$125 per month, \$30 of which I was to pay for her car. I was also to deduct her gasoline expense from her allowance. During the next month or two I realized that I was finding it difficult to live on \$125 which was my share. During one of the later contacts that I had with Gorin (these contacts were of purely social nature, meeting for cocktails or lunches) I happened to mention to him about my plight with respect to keeping up with the payments to my wife of \$125 a month, whereupon he stated that he realized the difficulty that I had in living on my reduced salary and asked why didn't I let him help me with those payments. At this point he reiterated his previous assurance that they had nothing against this country, that this country

was friendly to them and they friendly to us and that the only thing they were interested in getting was information concerning the Japanese. To my argument that nothing that I could possibly get for them concerning the local Japanese would be of any value to Russia he answered that there was always a possibility of some local angle having to do with possible Japanese Espionage in Russia. He again pointed out that the Japanese were our common potential enemy and it was as much in our interests to see that someone else also exerted some efforts against them.

I saw that there was reason to his argument and agreed to furnish him with information that came to my hands in which I thought he would be interested in. This information was mostly concerning the Japanese. On one or two items of information that I furnished and that did not involve any Japanese I gave verbal explanation to Mr. Dierst. Sometime in the past few months Gorin asked me how I stood with my wife and when informed that I still kept on paying her the \$125 per month he offered that I give her \$500 and get rid of the annoying payments once and for all. He did this, but in the settlement with my wife I discovered the \$500 did not cover the [295] entire settlement sum including the bills which she had incurred and

which I agreed to pay, I borrowed additional \$250 from California Bank on Terminal Island. A friend acted as a cosigner on this note. Altogether I received \$1,700 from Gorin, \$200 of which is still in my possession.

After two or three months of my relationship with Gorin he told me that his superior officers were extremely dissatisfied with information I was furnishing. They said to him that what they were getting was way below their expectations. I said to Gorin then that I regretted that there was nothing more I could do, but that inasmuch as I could not satisfy them perhaps it would be better if they stopped furnishing me with money. He said that I shouldn't feel that way about it and that sooner or later there might fall into my hands some information concerning the Japanese which might be of real interest to them, and that he did not wish to discourage me at all. Just as a bythought, at one time during my association with him I told him that I appreciated his financial assistance and that when my trouble with my wife was over I intended to repay him.

Conscientiously and honestly I did not think that my actions, aside from being highly unethical, were inimical to the best interests of the United States, to which country I am extremely grateful for what it did for me and which country's citizenship I value. This was

understood during my conversations with Gorin when I told him repeatedly that I felt very patriotic about USA and that under no circumstances would I do anything against this country. His reply to this was that he is authorized to assure me again that they realized my patriotic feeling for USA and that there was nothing for me to worry about in that respect because they entertained no other feeling but that of friendship and respect for this country and that they certainly did not intend to do anything against USA. -He stated that after all the USA permitted [296] them to send their aviation and other engineers to study in American plants and brought out other reasons why they had no desire to work against us here.

I sincerely state that at no time did I furnish Gorin any information which in my opinion would harm this country; on the contrary, I saw some reason to Gorin's argument that we had common cause, and by helping them I would also be indirectly helping our own cause. At no time was I ever in a position to obtain anything of secret nature about the U. S. Navy, nor about the secret armament, aircraft plants, etc., nor did I have any intention of turning such information over to Gorin should I have been in a position to obtain such information. I therefore do not conscientiously feel that I have violated any of the provisions of our es-

pionage laws, but feel keenly disgrace of violation of ethics, that is, divulging to other sources information as inoccuous as I felt it was. I likewise admit my weakness in answering the temptation of financial assistance offeredome to assist me in my domestic difficulty. I might add that during one of my attendances of Naval Reserve Officers affairs I came into possession of some confidential mimeographed Naval publication, which was distributed to everyone present, which never left my possession, and which I had no intention of turning over to anyone. I respectfully ask that it be noted that at no time did I feel I was doing anything criminal against the country that adopted me and have every desire to cooperate (and have done so) with the officers investigating this place.

(Then in longhand): Above is given voluntarily and signed without fear of intimidation and without any promise of reward or immunity.

HAFIS SALICH.
December 11, 1938. [297]

Witnesses:

J. H. HANSON, Special Agent, F. B. I.

S. R. MILLER, Special Agent, F. B. I.

G. V. DIERST,

Special Agent, F. B. I.

810 South Spring Street

Los Angeles, California

(End of Government's Exhibit No. 7)

Mr. Harrison: If the Court please, I would like to ask counsel if they would stipulate with me that when there was more than one page to the various reports, that both pages were included in the testimony of the witness, or shall I proceed to examine him about each one of these in which there are more than one page? I thought we might save some time.

Mr. Stone: I would be very glad to stipulate with you to that effect, Mr. Harrison.

Mr. Pacht: There were reports in these two volumes of reports marked Government's Exhibits 5 and 6 for identification, which consist, in some instances, of more than one page, and in some instances two or three pages, and I am willing to stipulate that when Mr. Dierst refers to the reports

that in some cases he was referring to reports consisting of, perhaps, more than one page.

The Court: It may be so stipulated.

Mr. Pacht: Not, of course, that Mr. Salich gave any of those actual reports, or even exact copies of them, to Mr. Gorin.

(Witness continues) I called upon Mr. Gorin on the afternoon of December 12th, he was in his office, the office of Intourist, Inc., in the Chapman Building on South Broadway, Los Angeles. There was with me Agent Bott of the Federal Bureau of Investigation. We first saw his secretary and then we were taken into Mr. Gorin's office and at that time we had a conversation with him.

Mr. Harrison: If the Court please, I am of the opinion that it is not admissible as to the defendant Salich. [298] I believe that to be on the safe side that we should only offer it as to the defendant Mr. Gorin.

### By Mr. Harrison:

- Q. Just relate the substance of the conversation that you had at that time with Mr. Gorin?
- A. Mr. Gorin was advised by me that we were making an investigation concerning information which had been turned over to him by Hafis Salich and asked that he come into our office to discuss the matter. Mr. Gorin advised that he would not come to our office and discuss the matter without prior authorization from his superior, and asked permis-

sion to call the Russian Ambassador at Washington, D. C. He was told that there was no objection, for him to call the Russian Ambassador, whereupon he called his secretary into the office and asked her to place a call for Mr. Treyanovsky at Washington, the Ambassador at Washington, D. C. He was unable to get the Ambassador on the bhone at that time. The secretary advised that the Ambassador was out, and asked him whether he wished to speak to anybody else. He inquired as to who was there and was advised that some other person, who I don't know, was there, and he stated that he would wait for the Ambassador. Mr. Gorin advised Mr. Bott and myself that it was the Russian Ambassador with whom he was speaking, and he talked with the Russian Ambassador in Russian, or a foreign language which I presume was Russian, and then advised us that the Ambassador had told him that he was getting in touch with the State Department in Washington and that undoubtedly within a very short time we-referring to Mr. Bott and myself-would hear from our superiors in Washington. In the meantime, we questioned him to a certain extent, and, during that questioning, he admitted that he knew the subject Salich, but would not state anything about Salich turning over any information-in fact he denied that Salich had turned over any information. He was asked about his employment and advised that he was not connected with the Bussian Diplomatic Service, but

that he was employed by the Russian Government through [299] the Intourist Bureau. He explained that under the Russian system of Government, all employees, or people who worked in Russia, or had anything to do with it, were employed by the Russian Government; but he had been employed by the Intourist Bureau of Russia and that he had come to America to take care of the Intourist end of the work in the United States. When I use the words "advised," "explained," and "admitted," I mean that he told myself and Bott of the matters that I said he advised us of, or explained to us.

(Witness continues) The conversation occurred around four o'clock I would estimate.

He was taken into custody-later in the evening and before that he had additional telephone conversation. About an hour and a half after we arrived, he received two telephone calls from parties whom he said were the Ambassador at Washington, and on both of these calls he spoke in a foreign language. He repeated that the negotiations were being carried on in Washington between the Russian Ambassador and the State Department and that he hoped within a short time that the matter would be straightened out. After he was taken into custody, he had two conversations on the telephone. The first conversation was at the time he was first taken into custody after the complaint and warrant was read to him. He telephoned to the Ambassador at Washington and read the complaint and warrant

over the telephone. He read that in English, because at that time we requested that inasmuch as he was under arrest that he confer with the Ambassador in English. He made no comments after he read the document to the Ambassador in Washington. While we were in Mr. Gorin's office, at midnight, the telephone rang, and he answered it, and we asked him who was speaking, and he said it was the Ambassador at Washington calling him, and we again requested he speak to the Ambassador in English so that we could understand his conversation. He held a conversation at that time. He merely explained or told the Ambassador over the telephone what was taking [300] place at that time; and that we were searching his office. There were no comments after he completed the conversation: Then Mr. Gorin was taken to our office at 810 South Spring Street.

I was present at the time that Mrs. Gorin was placed under arrest.

Whereupon defendant Gorin moved the Court to strike from the record and instruct the jury to disregard the whole of the conversations related by Mr. Dierst as having taken place with Mr. Gorin at the office of Intourist, upon the ground that none of it constituted an admission or confession and was not a part of the res gestae and did not in any way tend to prove any of the allegations in the indictment or any conspiracy between Mr. Gorin and Mr. Salich; and upon the further ground that

when a rational of a foreign power is arrested in this country he has the right to call upon the Ambassador of his country and talk to him, and to seek his aid or assistance in connection with his arrest, and that any statement made upon such an occasion, unless it be by way of an admission or a confession is inadmissible in evidence.

Said motion was denied. Exception allowed.

(Witness continues) I was present at the time that Mrs. Gorin was placed under arrest. This was at 141 North Irving Street. At that time there was present myself and agent Larmyeau, Anne Walling, a United States Deputy Marshal; Mr. Flemming, United States Deputy Marshal, Lieutenant William Maxwell of the United States Navy, and H. Bott was outside and subsequently came in. Mrs. Gorin was placed under arrest about five or 5:30 in the evening, I think about January 13th. It was the same date on which she was indicted. Mr. Gorin was not present when Mrs. Gorin first came home and was taken into custody, but came home shortly thereafter. I had a conversation with Mrs. Gorin in the absence of Mr. Gorin.

The Court: The jury are instructed to disregard the testimony as to the defendant Salich. [301]

The jury are instructed to disregard the testimony which is about to be related as a conversation between this witness and his associates and Mrs. Gorin in so far as the defendant Mr. Gorin

is concerned until such time as it develops that he came into the conversation.

(Witness continues) At that time I had a conversation with Mrs. Gorin relative to a suit of clothes. I asked her where the suit was in which the \$50 and the note had been left at the cleaners in September, and she advised me that she had sent two suits to a cleaning establishment that day and . that it was one of those suits. Mr. Bott proceeded to the cleaning establishment. In the interim two suits were delivered by a cleaning boy and Mrs. Gorin advised that those were not the suits, that undoubtedly the suit had been left over at the vice consulate on Vermont Street, from which they had moved. That is the substance of the conversation. Mr. Gorin returned home thereafter at about six o'clock, or shortly thereafter. I had a conversation with both; there was present Lt. Maxwell and the two Deputy Marshal previously mentioned, and Mr. Larmyeau.

The Court: Gentlemen, you are instructed to disregard the conversation that is about to be related by the witness in so far as it concerns the defendant Salich.

(Witness continues) Mr. Gorin, when he came in, was then asked specifically as to where the suit was in which he had left the \$50 and the paper at the cleaning establishing in September, and he advised me that it was left at the Vice Consulate's home on Vermont inasmuch as they had not moved

all of their personal property over to that address on Irving Street. He was further asked as to whether it was his suit, to which he replied that it was his suit. The substance of the conversation was that he was asked where the suit in which he had left the \$50 and the paper in September was, and as to whether that was his suit, and he replied [302] that it was and he stated that that particular suit was left by him at the Vice Consulate home when he had moved over-when they had moved over from Vermont Street. At the time I had this conversation with him, Mr. Gorin was doing all the talking at that time. She was present. When Mr. Salich accompanied me to the office, he remained there until three o'clock in the morning of the 13th of December, 1938. He was placed under arrest earlier that evening, probably about eleven o'clock.

#### Mr. Harrison:

If the Court please, this is in no way involving either Mr. or Mrs. Gorin, and is offered for the purpose of, in order that the jury might have the whole situation as existed there at the time these statements were made, that have been referred to and have been introduced as exhibits.

The Witness: Mr. Salich was advised in answer to his question as to whether he was under arrest, he was advised on the evening of December 10th, or, I would say, he was readvised that he wasn't under arrest at that time.

However, this matter was discussed with him as to remaining at the office. We advised him that we would like to have him remain at the office inasmuch as active investigation was being—taking place at that time, and that after all the facts had been accumulated and we had talked with Mr. Gorin, that we would present the matter to the United States Attorney, and Mr. Salich stated that he would be willing to cooperate in that respect, but that he wanted some limitation of time placed on that, and agreed that he would consent to that, with the consent it terminated on December 12, which was on Monday.

# Cross Examination

By Mr. Stone:

I have not related everything that was said in the conversation with Mr. Salich, but I have related substantially [303] everything that had a bearing upon this case. There was quite a lot of conversation and there may be some points throughout it that I have overlooked. To the best of my recollection I have related the substance of the various conversations which I evaluated as being pertinent to this particular case. There was other conversation about, perhaps, personal history, etc., concerning Salich, that has not been gone into. I have presented the whole of any written statements which he made, with the exception of a consent which he

signed, agreeing to remain in the custody of the office of the Federal Bureau of Investigation until December 12th. At the time we called at the apartment of Salich on December 10th, a search was made of his apartment. We found a lot of personal things which were turned back to you, and there was a lot of other matters which were not turned back, which might have some possible bearing on this, and were retained for the purpose of court examination or in case it became relevant. I don't have a chronological list of them with me here, but there is a list of them.

#### Cross Examination

By Mr. Pacht:

down on the 11th of January, I had the conversation at that time. It was approximately at 5:30. I interviewed them at their home at 141 North Irving Boulevard in this city. They told me that prior to that they had lived at 2315 North Vermont Avenue. Mr. Gorin may have said that the vice consul, who had rented that house, had left for Russia and that they were living out, so to speak, the unexpired term of that lease. I understood that during the investigation it came to my attention that the vice consul was not in Los Angeles at the present time, and that the Gorins were living there while the vice consul was away, and also at

the time when the vice consul was here. I refer particularly to 451 South Ardmore, which was the previous vice consulate. I don't know whether the vice consulate was on Vermont Avenue [304] at the time the Gorins resided there or not. While I was talking to Mr. Gorin, Mrs. Gorin was in and out of the room on a few occasions, from the living room into a bedroom. I don't know what she was doing. She was more or less in the immediate vicinity of Miss Walling, the matron from the Marshal's office. I was carrying on the conversation with Mr. Gorin. She was in the room part of the time that I was talking with Mr. Gorin, and she was out of the room in the next room part of the time. When I spoke to Mr. Gorin about this suit, he said that most of his effects, furnishings and clothing, and that of his family, were still at the North Vermont address. He stated that the suit which had been left at the cleaner's was at the vice consulate and he also offered to get that suit and bring it to the office. I didn't say whether I did or whether I didn't want him to do that; I didn't accept his offer to go to the vice consulate and get the suit. I didn't go to the Vermont Avenue address at any time: nor did I send anyone to get the suit.

# By Mr. Pacht:

Q. Mr. Dierst, I now want to invite your attention to the conversation at the Intourist office when you talked to Mr. Gorin. You have related on

direct examination having heard Mr. Gorin speak to the Russian Ambassador. Do you recall that?

- A. I did.
- Q. As a matter of fact, did not Mr. Gorin say—see if this doesn't recall the matter to your mind, Mr. Dierst—didn't Mr. Gorin say that the Russian Ambassador was not in Washington and was, in point of fact, not in the country, but that he was talking to the charge d'affaires?
- A. I understood him to say the Russian Ambassador.
- Q. Are you sure that he did not say the Russian Embassy?
- A. No. He told me that he was talking with the Russian Ambassador. [305]
- Q. Did you hear him call him by name during this conversation?
- A. I heard him call by name, but I could not repeat the name; it being a foreign name; it passed by me very quickly.
- Q. If I suggest this name to you, might if recall it to your mind? Did he say he was talking to Mr. Oumansky?
- A. I rather think that is who he was speaking with, now that you refresh my memory on it.

(Witness continuing) Adverting to the conversation with Mr. Gorin on January 11, 1939, and the matter of the suit, it was specifically referred to by me as being the suit in which the \$50 and the paper

had been left in by him at the cleaner's in September. I talked about the memorandum because that was the specific reason for my questioning him in regard to it.

## JOHN H. HANSON

called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

By M. Neukom:

I reside at 2700 San Marino Street, Los Angeles. I am affiliated at present with Lockheed Aircraft Corporation in Burbank, California. I commenced that line of work January 1, 1939. Prior to that for approximately eight and one-half years, I was Special Agent in Charge of the Federal Bureau of Investigation, last stationed here in Los Angeles as the Special Agent in Charge up until December 30, 1938. I was working for the Department of Justice; and from September until the time that I went to work for the Lockheed Corporation in 1938 I was in charge of the Los Angeles office. I have heard the testimony of Special Agent Mr. Dierst with respect to this case. The case was assigned to him and other agents were assigned to assist him from time to time. On December 10, 1938, I saw Mr. Salich in our offices, Room 603, 810 South [306]

Spring Street; that is, in the offices of the F. B. I. This was at about noon. I was notified as soon as Salich was brought into the office, and I went back to Mr. Dierst's office, where Mr. Salich was with Mr. Dierst, and I engaged in a conversation with Mr. Salich. I had known Salich since about 1936, and, naturally, we exchange greetings.

Whereupon defendant Gorin objected to the relation of the conversation of the witness with Mr. Salich upon the ground that it occurred after the alleged conspiracy had terminated and defendants Gorin and Salich objected upon the grounds that the conversation did not concern or affect the national defense.

Objections overruled.\(\) Exception allowed.

## By Mr. Neukom:

Q. I understand that you have stated that you knew Mr. Salich prior to that time? A. Yes.

Q. Now, will you relate the conversation as you recall it, which took place when you first met him then on December 10, 1938, in the office?

A. Well, as I have said, we exchanged greetings; and then the first question that Salich asked me was whether his coming down there was a pinch, or just what his status was. I informed him that he was not under arrest, that we were looking into his alleged relationship in furnishing information to Mr. Gorin of the Intourist, Inc. He said that he would have no hesitancy to tell us about his acquaintanceship and experiences with Mr. Gorin. So

he then went back to, say, about 1935, when he, Salich, was affiliated with the Berkeley, California, Police Department. He had among his acquaintances on the police force an officer whose name slips my mind at the present time, but this officer was acquainted with the Russian [307] Ambassador, and the officer had also met the Vice Consul for Russia, a man named Aliavdin, or some other such name as that; that this man, Aliavdin, had since returned to Russia; that in about 1936, as Salich came down to Los Angeles to become connected with the United States Naval Intelligence, that Aliavdin looked him up down here; he saw him on two or three occasions, and Aliavdin wanted Salich to furnish some information about the Japanese. Salich said that he declined to do so; that he related the facts of that contact to Lt. Commander Roachefort of the Naval Intelligence. He said that then, either late in 1937, or the first part of 1938, Mr. Gorin got in touch with him, coming out to his apartment building with a letter of introduction; that Mr. Gorin related that fact over the telephone to Mrs. Salich, and that later on Salich looked up Gorin at his home and they had several visits, and thereafter Salich began furnishing to Mr. Gorin certain information about Japanese activities, and that he had received for furnishing that information \$1700. He related that the last time he had seen Mr. Gorin prior to our conversation on December 10 was on the preceding evening, and he said that

the last time prior to that conversation that he had furnished any information to Mr. Gorin was on November 25, and that he had received from Gorin at that time—that is November 25, 1938—he had received from Gorin at that time \$200. He mentioned that the money that he had on his person at the time he was in our office, which consisted of a little over \$200, was the \$200 that he got from Mr. Gorin.

- Q. What denomination was that money?
- A. Four \$50 bills.
- Q. Four \$50 bills? A. That is right.
- Q. Now, this conversation, did it take place prior to the [308] time that Mr. Dierst was examining with Mr. Salich certain records from the Naval Intelligence?
- A. Yes; it took place immediately after Salich came into the office. Mr. Dierst was present, and shortly thereafter, after this general conversation, we obtained the files of the Naval Intelligence, two sections of them, and we went through those files, and at that time Salich made a general statement that we could assume the contents of any of the reports about the Japanese had been given to Mr. Gorin, but we insisted that he go through and specifically identify, or we asked him to go through and specifically identify the different reports which he had, and Mr. Dierst made notes.
  - Q. But you didn't yourself sit down with him?
  - A. That is right.

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(Testimony of John H. Hanson)

- Q. You observed Mr. Dierst doing that?
- A. That is right.
- Q. Now, at this time, was there any discussion in any of this conversation, or did Mr. Salich refer to any statute or discuss with you any statute?
- A. Yes. Mr. Salich stated that he did not believe that he had done anything wrong in furnishing this information to Mr. Gorin. He said that he had carefully studied the United States Espionage Statute and that he was positive in his own mind that he had not violated that law and, in fact, on December 11, when he was still in the office, and naturally he was wondering what was going to happen to him, what-whether the United States Attorney was to authorize prosecution, I gave him the United States Code Book, the Code Annotated, and he read over the Statute himself. There was one particular clause in there that impressed itself on his mind. He thought possibly because of that particular wording that he might have done something.
- Q. Was it a book similar to the one I have in my hand (in-[309] dicating)?
  - A. It was a large book.
  - Q. A large book? A. Yes.
- Q. Do you recall, offhand, what statute he read over in your presence?
- A. No. All I can say is the espronage statute. He said the wording in the statute of "detriment to the United States," might be the reason why the

(Testimony of John H. Hanson)
United States Attorney would authorize prosecution.

- Q. Now, was this conversation that you had on or before the time he had typed or signed a written instrument?
- A. All of the conversation that I have related, excepting about reading the statute book, was prior to the time that he had written up his own statement. He started writing that late on the afternoon and evening of December 10. He actually looked at the code book on the 11th.
- Q. But had he had any discussion with you with respect to the statute prior to the time that he actually read the code book itself? A. Yes.
  - Q. What date?
  - A. That was on December 10.
- Q. Will you explain to the jury as to what statute books, what code books, were referred to, whether it was a Naval Code book, or whether it was the United States Statute?
- A. The book that I referred to contains the United States Statutes.
- Q. And the one that Mr. Salich on December 10, 1938, told you that he had read the statute pertaining to espionage, did that pertain to the United States Statutes?
  - A. The United States Statutes, that is right.

[310]

Q. You had a discussion of the general nature of those statutes? A. Yes.

(Testimony of John H. Hanson)

Mr. Pacht: I now move to strike the whole of the conversation just related by the witness with Mr. Salich on behalf of the defendants Gorin, and each of them, upon the ground that this conversation occurred after the termination of the alleged conspiracy, constitutes hearsay as to these moving defendants, and further, that there has been no proof of any conspiracy, and when your Honor has ruled upon that, I would like to make a specific motion as to a particular part of this conversation.

The Court: The motion to strike will be denied.

Mr. Pacht: May I be allowed an exception?

The Court: An exception.

Mr. Pacht: I now move to strike that part of the conversation related by Mr. Hanson as to what was done and said by Mr. Hanson and by Mr. Salich with respect to the United States Annotated Code, and/or the Espionage Statute, his interpretation of it, or what he thought with relation to the statute.

The Court: Gentlemen of the jury, as to that portion of the testimony of this witness having to do with his examination of the United States Code or the United States Statute on this particular occasion, you shall disregard insofar as the defendants Gorin are concerned.

Mr. Stone: May I join in that, your Honor, on behalf of the defendant Salich, upon the ground that it does not constitute an admission and has no tendency to prove or disprove any issue in this case? (Testimony of John H. Hanson)

The Court: As to the defendant Salich the motion will be denied, it being in the Court's mind one of the elements having to do, possibly, with intent. An exception is allowed.

(Witness continues) Later on in the afternoon and night [311] of December 10 when I had occasion to go back to Agent Dierst's office where Mr. Salich was located, I observed him typing out a statement and he at that time informed me that he was writing out an account of his experiences with Mr. Gorin. Government's Exhibit No. 7 for identification which you are showing me is the statement that I observed Mr. Salich writing out and in fact on December 11, late in the forenoon when I was in the office I was informed that he wanted to sign this statement and I went back there and he signed it in my presence, and at my request signed each of the pages of the statement. That is my signature in pen and ink, "J. H. Hanson, Special Agent, F. B. I." It was put there at the time Mr. Salich signed that statement.

#### Cross Examination

By Mr. Stone:

These conversations which I have described are the same conversations concerning which Mr. Dierst testified. I have told the substance of those conversations. I testified that Salich read what I called the Espionage Act, and at the conclusion of that reading he pointed to some wording concerning

(Testimony of John H. Hanson.)

"detriment of the United States," and said that might affect the opinion of the United States Attorney. He did not say "If this information affects the defense of the United States, that would affect the opinion of the United States Attorney." As he read the statute, as his eye hit the word "detriment," a thought occurred to him that it would possibly be on those particular words that the United States Attorney would make his decision. Nothing was said about the facts at that time. Nothing was said about whether or not it affected the national defense. He was thinking about the opinion of the United States Attorney. Nothing was said about the words of the statute relating to or affecting the national defense.

We naturally went through his effects. We asked him if we could see everything on his person. He permitted us to look at [312] everything. We listed the money and it was returned to him, and we obtained a receipt.

# WILLIAM S. MAXWELL,

called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

By Mr. Neukom:

I am a Lieutenant in the United States Navy assigned to the regular line branch of the Navy, at present time stationed at the Eleventh Naval Dis-

(Testimony of William S. Maxwell.) trict, San Diego, California. It is what they call the line branch of the navy; that branch that is the commanding branch of the Navy. In other words, it is the branch of the Navy which has command, authority, other than the staff cords. At the present time I am assigned to the office of the Naval Intelligence, that is, the Eleventh Naval District Office, of which the head is Commander Zacharias, who is my superior officer. I was born in Russia. I entered the United States Navy the early part of 1917, and was commissioned a Lieutenant in the Navy on one, July, 1936. Naturally I speak the Russian language. I have met Mr. and Mrs. Gorin. The first time I met Mr. Gorin was on the 14th of December, 1938, at the County Jail, at about 9:30 in the evening; I, in company with Dierst and Mr. Harrison and a Mr. Ivanunshkin, who introduced himself as a Russian consul, and a Mr. Stepanian, who was his escort, and also there was a Mr. Frankel, who, I believe, introduced himself as a local attorn y of Los Angeles.

Mr. Stone: Your Honor, may I inquire if this is offered as against the defendant Hafis Salich?

Mr. Neukom: No, your Honor; this would not be binding as to the defendant Hafis Salich.

Mr. Pacht: This might properly better be made as a motion to strike—I don't know what the witness is going to tell about it—but from the nature of the question I think that it is irrelevant and [313] immaterial as to the defendant Mikhail Gorin,

(Testimony of William S. Maxwell.) because it does not constitute any admission or confession and is irrelevant as to any issue being tried here.

The Court: The point will be considered as having been presented in a timely manner and made as a motion to strike.

(Witness continues) There was a conversation in the presence of Mr. Gorin as to who this person was, Mr. Ivanunshkin. I was down there at the County Jail to understand any language in Russian. Mr. Ivanunshkin spoke to Mr. Gorin when he appeared; they exchanged regular salutations in Russian. Mr. Gorin came out with his arms folded, and he asked him: "How are you?". Mr. Gorin replied, "Very well. Thank you."

And the next question was: "How are you feeling?" And he said, "Fine." And the next question was, he asked Mr. Gorin why his eyes were wollen; and Mr. Gorin says, "Why, I feel all right. There is nothing wrong with me." And then he asked him as to his treatment. He was generally very much concerned with Mr. Gorin's treatment. He asked about his eyes. At that time they were rather swollen. Mr. Ivanunshkin asked Mr. Gorin the reason why his eyes were swollen, and Mr. Gorin's reply was that he felt fine, that he has no reason to offer. Then Mr. Ivanunshkin asked him: "Well, what has happened?" And Mr. Gorin replied, "Well, don't you know? Haven't you been reading the papers?" And Mr. Ivanunshkin replied, "You can't always

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(Testimony of William S. Maxwell.)
get facts from the newspapers." And the next
question was: "Have you spoken to anyone in connection with this arrest?" Mr. Ivanunshkin said
that, and Mr. Gorin's reply was, "No, I haven't
said anything about it." And the next question
was: "That is fine." Mr. Ivanunshkin replied;
"That is fine; we will say nothing about it nor
make no statements about it." And the next question was: "We will make no statements in connection with the papers founds in the suit." Mr.
Ivanunshkin said that, whoever he was. Mr. Gorin
didn't say very much; Mr. Ivanunshkin did most of
the talking. [314]

Mr. Pacht: I think sufficient of this conversation has been related to make it apparent that this conversation does not constitute a confession, or an admission; no evidence of who this man was, and none of this tends in any way to prove the commission of any crime, or the proof of any allegation in the indictment. My objection does not go to the question of who this man Ivanunshkin was. My objection goes to the merits of the conversation, to the substance of the conversation that was had there, that anything that this particular person told him is of no proof and does not constitute any proof. of any offense. I will stipulate with the District -Attorney that this gentleman whose name we both have considerable difficulty in pronouncing was, at the time, the Russian Vice Consul from New York, an accredited Russian Vice Consul, stationed in New York.

dillo

Mr. Neukom: We are willing to accept that stipulation, your Honor.

The Court: Very well, it may be received.

(At this point, the following proceedings were had between Court and counsel at the bench, outside the hearing of the jury:)

Mr. Harrison: If the Court please, we expect to have this witness testify, in effect, that Gorin—that this Vice Consul told him in effect, "We will make no admissions except you know the other party involved, you have no knowledge of any articles found in your suit at the cleaning shop."

That was the statement made in Russian by this man that arrived here, that had just arrived, and who made this statement to him, and the defendant simply acquiesced.

Mr. Pacht: I think—the interview with this man in the County Jail, he is a diplomatic representative of the Government of which he is a national, and he undertakes to give him advice. Gorin is wakened from his sleep and is told this. Now, there is [315] no obligation on his part under those circumstances to speak or to say he will take the advice or he won't take the advice. There is nothing he could do about it. The man comes here and tells him to do this. How can that possibly charge this man with any guilt?

The Court: As an isolated circumstance, that might be true, and the Court would consider that it was inadmissible, but as one of the series of this

kind, it seems to me that the jury may consider it of such weight to give it some consideration. It seems, like in one of the other instances, as having very little weight, but still it seems to me it is admissible as one of a series which I believe the Government is entitled to show; otherwise the proof of a conspiracy is almost impossible because almost all of it is the combination of little items which go to make up the whole and, therefore I think we have to be more lenient so long as no substantial injustice seems to be done here, and I will protect the situation with proper instructions. I believe each of these elements is entitled to go to the jury. Here is a question as to intent and as to his connections with the Russian Government. Here is an accredited Russian representative that comes out and instructs this man as to certain things. I have got to let it in.

The Court: Gentlemen of the jury, as suggested by counsel for one of the defendants, the only object of these conferences at the bench is to avoid the necessity of sending the jury to the jury room and then having the matter discussed in open court. It saves time to do it this way.

After the representations made the motion to strike and the objection—the motion to strike will be denied and the objection will be overruled and an exception will be allowed with the understanding that if the connection is not properly made during the trial that the testimony will be subject to a mo-

(Testimony of William S. Maxwell.) tion to strike on behalf of the defendant Mikhail Gorin.

By Mr. Neukom: [316]

Q. Now, Lieutenant Maxwell, after the preliminary introductions, do you recall what Vice-consul Ivanunshkin stated to Mr. Gorin in Russian in your presence, the substance of it?

A. Yes, sir. He asked Mr. Gorin whether or not he discussed the case with anyone. Mr. Gorin's reply was he had said nothing about the case. Mr. Ivanunshkin replied, "That was fine," and the next question was, well, we will make no admissions whatsoever except that we knew the other fellow, or the other man.

Q. Did he make any comment with respect to a suit?

A. He stated——

The Court (Interrupting): Who do you mean by "he"?

The Witness: Mr. Ivanunshkin said to Gorin, "Mr. Gorin," that, "well, we will admit—we will admit nothing which was found in the suit at the cleaning shop."

## By Mr. Neukom:

Q. Now, was there any further conversation with respect to that there, as you recall, that evening?

A. There was considerable questioning by Mr. Ivanunshkin as to Mr. Gorin's welfare and comfort, as to his treatment that he was receiving while in the jail. Mr. Ivanunshkin was particularly in-

(Testimony of William S. Maxwell.) terested in Mr. Gorin's general health and the treatment that he was receiving and asked how he was feeling.

Q. Was there any conversation with respect to the release of Mr. Gorin?

A. Yes. Mr. Gorin asked Mr. Ivanunshkin approximately when he would be released and Mr. Ivanunshkin replied it may be tomorrow or the day after tomorrow, that it takes a little time to arrange for the release. He also stated—Mr. Ivanunshkin also stated that he had just arrived two or three hours ago and he hadn't had an opportunity to make any arrangement whatsoever.

Mr. Pacht: I move the Court to strike the whole of the testimony given by Lieutenant Maxwell as to the conversation which [317] took place at the County Jail between Vice-Consul Ivanunshkin and Mr. Gorin and any of those present, upon the ground that none of it constitutes an admission against interest or a confession nor is there anything to indicate that there was any duty or obligation on the part of Mr. Gorin to make any reply to what this man Ivanunshkin advised him to do or told him to do. There was no duty upon his, Gorin's part, to speak and for all of/those reasons I move to strike the whole of that testimony and ask the Court to instruct the jury to completely disregard the oconversation as related by Lieutenant Maxwell, and it is immaterial to prove any issue alleged in the indictment.

The Court: It isn't possible to say definitely whether or not that may be true, but at the time the motion will be denied and an exception allowed. If, later in the trial, it appears that the connecting links have not been supplied the motion may be entertained.

(Witness continues) After this incident, I saw Mr. Gorin on the street here in Los Angeles towards the first of this year, January 1939. That was about the 3rd of January 1939, at about 1:30 p. m. in the afternoon in front of the Chapman Building—I think it is on Spring Street—downtown, Los Angeles. Mr. Gorin spoke to me. I was standing in front of the building reading the newspaper when he recognized me and we exchanged greetings and he asked me to come up to his office in the Chapman Building, which I did. I had a conversation with him there. Just Mr. Gorin and myself were present.

The Court: The jury are instructed to disregard this conversation as to the defendant Salich.

(Witness continues)

Mr. Gorin sat down at his desk and stated to me as follows: He informed me that the information which he obtained was in no way, shape or form detrimental to this country. He was very [318] emphatic in that. He further told me that when the agents from the Federal Bureau of Investigation entered his office, that he did not try to cover anything up; that he opened his drawers and told them

that they were welcome to anything in his office. He also told me that one of his drawers was locked, for which he couldn't locate the key, that he broke that drawer in order for them to get in that particular drawer. The conversation continued along the lines where the Russian people as a whole were friendly to this country, and always have been; that Russia is not interested in anything pertaining to the national defense of this country, the United States. His remarks were very, very emphatic as to the friendly relation that Russia and this country have had in the past, and will continue to have.

### Cross Examination

## By Mr. Pacht:

I got to the County Jail on the evening which I have described around 9:30 p. m. We waited there for about twenty minutes for Mr. Stepanian and Mr. Ivanunshkin to arrive. I couldn't say whether Mr. Gorin was asleep when we got there. I do know that it took about fifteen minutes. We waited about 15 minutes before Mr. Gorin appeared. I don't know what time the prisoners in the County Jail are ordered to bed.

Assistant District Attorney, Mr. Neukom, then proceeded to read to the jury from the original Government's Exhibit No. 2, the stipulation portion of which having theretofore been read to the jury and appearing in a previous portion of this Bill of Exceptions, the same reading as follows:

GOVERNMENT'S EXHIBIT No. 2

Names of aliens:

Gorin, Michael, 31 m. married.

Nathalie, 29 f, wife.

Villy, 6 m, son.

Russia-Russians.

Before a Board of Special Inquiry held at Ellis Island, New York Harbor, N. Y. January 10, 1936, 2:45 P. P.

Present: Messrs. Calvin (Chmn) Hibler & Monahan. [319]

Alien stated he has a three year contract with Entourist Agency in New York. Alien has Russian passport valid till October, 1936. Has contract to remain in the United States for three years.

No. Immigration visa (C. L.) Insp. Ferro.

S. I. 1. SS Europa, North German Lloyd Line, First Class.

Arrived in New York Harbor on January 10, 1936.

Delivered at Ellis Island January 10, 1936, 2.00 P. M.

Elder Aliens sworn by Insp. Galvin, testified in English:

My name is Michael Gorin, 31 years of age, marrie. Traveling with my wife, Nathalie, 29 years of age, and my son, Villy, 6 years of age. We arrived on the SS Europa leaving Cherbourg on January 1, 1936. I was born in

Verhnie Dobrovka, Russia, on October 24, 1904, where I have my mother, Raisa, in good health. My wife was born in Saratov, Russia, on August 15, 1906, where she has no relatives. My son was born in Ispahan, Persia, June 6, 1929. My family and I have been living in Moscow, Russia, where we have no relatives.

My wife and I c read.

The Entourist b. u of Moscow paid our passage.

I am a representative of the tourist business. Housewife; school boy.

Never in the United States.

Going to the Amtorg Trading Corporation, 261 Fifth Avenue, N. Y. City.

No money.

When I left Russia I was told I would be in the United States for two or three years.

Passport of the Union of the Soviet Socialist Republic, in the name of the male alien, No. 02431/24549, issued at Moscow, Russia, November 17, 1935, valid for a period of one year from the date of passing over the border. (Passport indicates that the alien passed over the border on December 29, 1935). Passport endorsed with [320] visa No. 93, dated at the Consulate, Moscow, Union of the Soviet Socialist Republic, December 11, 1935, over the signature of Ellis A. Johnson, Vice Consul of the United States.

Visa granted under Section 3 (2) of the Immigration Act of 1924 as temporary visiter, and in the case of the female applicant and child there is shown passport of the Union of the Soviet Socialist Republic No. 02432/24550, dated at Moscow, November 17, 1935, valid for one year from Dec. 29, 1935, the time of crossing the border. Passport endorsed with visa No. 81, dated at the Consulate, Moscow, Union of the Soviet Socialist Republic on December 9, 1935, over the signature of Ellis A. Johnson, Vice Consul of the United States. Visa granted under Section 3(2) of the Immigration Act of 1924 as temporary visitors.

Never debarred or deported from the United States or Canada.

- Q. You have the right to have a friend or relative present at this hearing; do you wish to avail yourself of that right?
  - A. I waive the right.
- Q. Just why are you and your family coming to the United States?
  - A. For work at the Amtorg Organization.
- Q. You previously testified you were coming here to go to the Entourist Bureau. What connection is there between the Entourist Bureau and the Amtory Trading Corporation?
- A. It is a department of the Amtorg Trading Corporation.

Q. Just what are you to do here for the Amtorg Trading Corporation?

A. I will be a Director of the Tourist De-

partment. .

Q. Just what will your duties be?

A. We have a big tourist organization in America. Plenty of tourists go to Russia and I will organize tourist parties from America to Russia.

Q. In what way were you employed before coming to the U.S.?

A. In the Entourist Department in Moscow.

[321]

Q. How long have you been connected with the Entourist Corporation in Moscow?

A. Seven years.

Q. What salary are you to receive while here in this country?

A. 300 United States Dollars per month.

Q. By whom will you be paid?

A. By the Entourist Organization here.

Q. Are you coming to the United States for any purpose other than to act as Director in the Entourist Bureau of the Amtorg Trading Corporation?

A. No.

Q. Just how long do you plan to stay here?

A. Two or three years.

Q. Where are you going after your two or three years visit to this country

A. Back to Russia.

- Q. Is there any likelihood that you will be recalled by your organization before the expiration of two or three years?

  A. Yes.
- Q. Are you in any way interested in the social or political conditions in this country?
  - A. No.
- Q. Have you been instructed by any of the superiors of your organization to make observations of the political or social conditions here?

By Insp. Hibler:

- Q. Who is to pay your salary while you are in this country?

  A. The Entourist.
- Q. Are you to be paid by the Amtorg Trading Corporation or by the Russian Government? [322]
- A. By the Russian Government through the Amtorg.
- Q. Are you to receive any expenses while in the United States besides your salary?

A. No.

The remaining questions for the time being were those propounded to the wife, and they read as follows:

To the wife, by Insp. Galvin:

Q. Just how do you expect to devote your time in this country?

A. Keep house for my husband and take care of the child.

Q. Have you any blood relatives in this country?

A. No.

Q. If your husband is recalled some time within two or three years are you to accompany him back to Russia?

A. Yes.

Q. While you are here do you plan to enter

any educational institution?

A. No, but I might want to study the English language.

Q. Have you a profession of your own?

A. No.

Q. Are you interested in any way in social work?

A. No.

Q. Will you engage in any outside activity. aside from keeping house for your husband and child while you are here?

A. No.

By Insp. to the boy:

Q. What is your name?

A. (Thru Interpreter Dworzecki): Villy.

Q. Did you ever go to school?

A. No.

Q. Do you expect to go to school while you are in the U. S.?

A. Yes. [323]

Witness sworn by Insp. Galvin, testified in English.

Q. What is your name?

A. Nathan Post.

Q. Where do you live?

A. 1081 Anderson Avenue, New York City.

Q. Of what country are you a citizen?

A. I am an American citizen now.

Q. Have you your citizenship papers with you?

A. No.

Q. In what year and in what court were you naturalized?

A. In 1924 in the Supreme Court, New York

Q. What is your business?

A, I work for the Amtorg Trading Corporation for the last six years,

Q: What do you do for them?

A. My duty is to receive the people who are sent here from Russia and prepare the documents to go back.

Q. What is your interest in the Gorin family?

A. They came to the Entourist Department of the Amtorg Trading Corporation.

Q. Speaking of Mr. Gorin, just what will his duties be?

A. He is one of the Directors of the Entourist Department.

Q. Just how long will he remain in the United States?

A. The Director stays some times two or three years because this is an important business.

Q. Is the Amtorg Trading Corporation to be responsible for his salary and all incidental expenses?

A. Yes.

By Insp. Hibler to the witness:

Q. Do you know where Mr. Gorin is going to stay?

A. He will stay at the Hotel Aberdeen for a little while. [324]

Q. What is Mrs. Gorin to do here?

A. Just her housework.

Q. Has she a position under the Amtorg?

A. No.

Q. Is she to receive any salary?

A. No. 4

Q. What is the amount of salary Mr. Gorin is to receive?

A. I don't know how much per month; about \$250 or \$275 per month.

Q. Has Mr. Gorin a contract with the U. S. S. Republic?

A. He has no signed contract but they sent him here to the Entourist Department of the Amtorg Trading Corporation, and by reason of his being sent here the Amtorg will be responsible for him.

Q. Is it not possible for the Amtorg to obtain a man in the United States to take charge of the tourist business? A. No.

Q. Why not?

A. This is special work for the Entourist as only a Russian man can do it.

By Mr. Hibler: I move to admit all three aliens under Section 3(2) of the Act of 1924, for a period not to extend beyond Oct. 28, 1936.

By Mr. Monahan: Seconded,

By Mr. Galin: Unanimous.

By Mr. Galvin to elder alien:

You, your wife and child have been admitted to the United States temporarily for a period of time not to extend beyond October 28, 1936. If later you should find it necessary to remain longer than that period you will see that your passport is revalidated for a period of time at least sixty days beyond the time you desire to remain here and make formal application through the Amtorg Trading Corporation for an extension of time? [325]

A. I understand.

I hereby certify that the above, consisting of five pages, is a true and correct transcript of the stenographic notes recorded by me.

(Signed) J. J. MONAHAN,

Secretary.

(End of Government's Exhibit No. 2)

# ELIAS M. ZACHARIAS,

called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

By Mr. Harrison:

I have been connected with the United States Navy a little over thirty years. My first connection

(Testimony of Elias M. Zacharias) commenced at the United States Naval Academy, Annapolis, Maryland. I am a graduate of that institution, and since that time have been actively connected with United States Navy, and am still so connected. I have followed the regular line of duty assigned to officers in the line of the Navy, that is the command branch of the Navy, which is composed of certain terms at sea and certain terms on shore. At sea my duties have been those required by the training to fit an officer for command rank, and those on shore have been practically entirely connected in intelligence work. I have been a Commander approximately six years, and have been connected with intelligence work directly and indirectly about twenty years. I am assigned to the Eleventh Naval District Headquarters at San Diego, and serve as District Intelligence Officer, and have served in that capacity in this area since May 13, 1938. . The Eleventh Area consists of Southern California as far north as Kern and San Luis Obispo Counties, and the states of [326] Arizona and New Mexico. The main office is in San Diego at the District headquarters, and we have a branch office at San Pedro where there is stationed an assistant District Intelligence officer. The San Pedro branch office is under my direct control, and .Lt. Clayborne is in charge. He has been in charge since the latter part of May, 1938. I know the defendant Salich and first became acquainted with him

(Testimony of Elias M. Zacharias) shortly after I assumed the duties as District Intelligence officer. I have talked in the presence of Mr. Salich relative to his duties. He had the status of a paid employee without contract. He is paid by cash check by the Assistant District Intelligence officer. These are not checks of the United States Treasury or of the United States Navy. The funds from which he is paid come from my office. I never at any time had any conversation with Salich as to the method of payment. He was employed before I became Commander of this area. I do know that he was paid with checks payable to cash. The employees, and those working in connection with the Naval Intelligence at San Pedro are working under my direction. All activities engaged in by that office, and all reports received in that office are submitted to me. They work under my orders.

## By Mr. Harrison:

Q. Commander, have you had under your supervision the defendant Salich as investigator?

A. I have.

Q. And what were his duties as such investigator?

A. To collect information or data on individuals suspected of obtaining or attempting to obtain information relating to the Naval establishment. Information on individuals engaging in or making preparations to engage in sabotage of the Naval establishment, or activities directly connected with

(Testimony of Elias M. Zacharias)

the defense efforts of that Naval establishment. Individuals engaged in or attempting to engage in subversion of personnel, looking to the nullification of [327] the defense efforts of the Naval establishment, or actual immobilization thereof.

Mr. Pacht: I move to strike out the whole of the answer of the witness upon the ground that the answer as given by the witness has added to, and is an attempt to add to, the provisions of the Espionage Act, as set forth in Sections 31, 32, and 34, Title 50.

The Congress itself has made no such specifications in the statute, has not given such a broad definition of the term "national defense" as Commander Zacharias in his answer has indicated, and that the opinion and conclusion of Commander Zacharias as to the purpose of the Act and as to its provisions and as to the work which any agent or employee working under Commander Zacharias is incompetent, irrelevant and immaterial for any purpose in this case.

Mr. Stone: May I join in that objection, your Honor.

The Court: The motions on behalf of all of the defendants will be denied.

Gentlemen: The law in this case you will take from the Court. Counsel for the Government or the defendants, or the witness, or anybody else, has no power to read anything into the stautes of the United States. At the proper time and under the (Testimony of Elias M. Zacharias)

proper circumstances, in instructing this jury, the Court will define the term "national defense," and will give you explicit instructions as to the law involved. This testimony is being taken, not to instruct you as to what the law is, but simply as to the fact of what the men were directed by their superior officer to do, what the scope of their activities was. It is merely a fact.

The Court: Exception to all concerned.

Q. Commander, when you mentioned the Naval establishment, [328] what did you mean by that expression?

To which question defendant Gorin objected on the ground that it is specifically described in its relation to any violations of the Espionage Act and Section 31, subdivision (a) of the Espionage Act, and that it called for the opinion and conclusion of the witness.

Objection overruled. Exception allowed.

The Witness: The Naval establishment are those enterprises necessary for the operation of the Navy in time of peace and and in war. It comprises ships, airplanes, repair bases, operating bases, communication centers, ammunition depots, armament factories, naval aircraft factories, fuel depots, and such correlated activities.

Defendant Gorin moved to strike the whole of the answer of the witness upon the ground that under the guise of answering a question apparently call(Testimony of Elias M. Zatharias)
ing for a statement of fact, the witness had given to
the jury his interpretation of what the Naval establishment consisted and added a specification to the
statute which was not contained therein, and that
the answer of the witness was a conclusion and
opinion upon matters defined by subject.

Motion denied. Exception allowed.

In overruling the objection the Court stated as follows:

The Court: The jury have been explicitly instructed that no one reads anything into the statutes; that that is simply the explanation of what this witness means by his testimony in the previous question as to Naval establishment.

(Witness continues) There was a time when I talked in the presence of Mr. Salich relative to his duties and the functions of the Office. I recall distinctly two occasions. The first was at a meeting in the office of the Assistant District Intelligence Officer at San Pedro, attended by individuals connected with the Naval Intelligence Service, among them Mr. Salich, shortly after I [329] assumed my duties as District Intelligence Officer. There was present besides Mr. Salich, Lt. Clayborne, Mr. Stanley and certain members of the Intelligence Service. Mr. Hanna was not present.

Q. Will you state what you said at that time, concerning [330] the nature of the work that your investigators were doing?

(Testimony of Elias M. Zacharias)

Mr. Pacht: Pardon me-

Mr. Stone (Interrupting): To which I object, your Honor, upon the ground that it has no tendency to prove or disprove any of the issues involved in this action.

The Court: The objection will be overruled. Exception allowed.

Mr. Harrison: I assume, if the Court please, that it is understood that this testimony is not binding upon either Mr. or Mrs. Gorin?

The Court: Yes. The Government states that it is offering this testimony only as binding upon the defendant Salich. The Gorins not being present on this occasion, they are not to be bound by anything that is revealed in connection with this conversation, and you are instructed to ignore the conversation in so far as the two defendants Gorin are concerned.

Mr. Pacht: Notwithstanding the statement of the District Attorney, as to who he is attempting to bind by this statement, I nevertheless object, on behalf of the defendants Gorin, to the relation of the conversation, because the relation of it is, in our opinion, prejudicial, or would prove prejudicial, to these defendants, in that it will enlarge upon the provisions of the Espionage Act upon which this prosecution is being had, and read into it words and specifications therein present not contained;

(Testimony of Elias M. Zacharias) and it is irrelevant to prove either a conspiracy or any of the allegations of the indictment, or any count thereof.

The Court: The objection is overruled.

Mr. Pacht: Exception.

The Witness: At that time I recounted the site uation surrounding the espionage trial in New York recently completed. I told of the activities connected with that case, with which I was directly connected four years previously, and I emphasized to that group [331] the vulnerability of information for the purpose of impressing upon them the necessity for properly safeguarding information. It was at that time that I stressed the necessity of keeping from anyone information developed, and pointed out that human beings have the frailty of desiring to tell what they had done, or what they had accomplished. And it was on that occasion, to · impress this fact upon them, that I made the remark, after stating that they should not even tell things of this nature to their wives or families, that I said, "You must get your glory out of the accomplishment and", as has already been testified in the court, I did make the statement that "intelligence work, like virtue, is its own reward". 1 have given the substance of the first statement I made in the presence of Mr. Salich.

Mr. Pacht: If the Court please, I move to strike this testimony particularly because the Commander has brought into his answer a prosecution under the Espionage Act and has brought before this jury a prosecution under the Espionage Act which he says took place in New York that has injected into this case issues not presented by the indictment and is prejudicial to the defendants, so that the jury is bound to speculate or may speculate upon the outcome of that case in New York.

Mr. Stone: I have a separate objection, a motion to strike upon the ground that the answer is opinion testimony upon a subject upon which opinion testimony is not permitted.

The Court: The motions will both be denied.

Gentlemen of the jury, this witness is simply testifying as to what he told Mr. Salich and others at this conference. What he said may conceivably be true. It may conceivably be false. It is conceivable that he might have told the men that the moon was made of green cheese. It is not offered for the purpose of proving the truth or falisity of those statements but is offered for the [332] purpose of showing what was told to this defendant at that particular time. You are not to acquire any prejudice of any sort by virtue of any of these statements, particularly as to the defendants Gorin who were not present during that conversation.

Exceptions allowed.

(Witness continues) There was a second occasion when I talked in the presence of Mr. Salich at our office. When I say "our office" I mean the office of the Naval Intelligence at San Pedro. It was just prior to the time at which the American Legion Convention was held in Los Angeles. I think it was the fall of the year 1938. This conversation took place at the same office, the office of the Assistant District Intelligence Officer at San Pedro. It was in the evening, and there were present Lt. Clayborne, Mr. Stanley, Mr. Salich and certain individuals connected with the Intelligence Service or Intelligence Reserve Organization.

Q. And what was said at that time relative to the nature of the work of the Naval Intelligence or the nature of the work of its investigators in this area?

M. Packt: To which we make the same objections as noted in support of our objection to the previous conversation; they do not prove any allegation in the indictment, and the other grounds asserted.

The Court: My understaning is that it is not claimed the Gorins were present at this conversation?

Mr. Harrison: It is not claimed they were present, if the Court please, and we are taking exactly the same position on this conversation as we did with the previous one.

The Court: Gentlemen of the jury, the Government states that they are offering this testimony as (Testimony of Elias M. Zacharias)

applicable only to the defendant Salich, and that it is not binding upon or intended to be binding upon the defendants Gorin, and you are instructed to ignore [333] the substance of the conversation in so far as it has to do with the defendants Gorin.

Mr. Stone: May the record show an objection, your Honor, on behalf of the defendant Salich upon the grounds already stated?

The Court: The objections will be overruled and an exception allowed to all defendants.

#### By Mr. Harrison:

Q. You may proceed, Commander.

A. I outlined to them the subversive activities which I considered were going on in the United States and said to them that I considered the activity of all such groups and organizations to be identical in that they were all looking to entrenchment of themselves to be able to control the defense efforts of the United States in time of an emergency in which they might become involved.

Mr. Pacht: I move to strike the answer of the witness.

The Court: The motion is sustained. The answer will be stricken.

Mr. Pacht: I ask your Honor to declare a mistrial upon the ground that the statement made by the witness, apparently in answer to a question of the District Attorney, is in substance an inflammatory address to the jury concerning the duties and

(Testimony of Elias M. Zacharias)
obligations of all citizens with respect to the national interests of the United States.

The Court: The motion will be denied.

Mr. Pacht: Exception.

The Court: It seems to me this jury understands what the situation is and that they will not be prejudiced in any way by any person's views.

I have been very careful to caution you that you will take your interpretations of the law from the Court. The conversation will be stricken because it does not seem to the Court to be material [334] to any of the allegations here before us. These conversations are admitted on the theory that from a construction as to the confidential nature of the material, the jury may be able to gather information to be used in determining whether the intent required by the statute was present in the defendant Salich.

May I caution the witness to confine his revelations of the conversation to that particular phase of the matter having to do with the instructions given to the defendant Salich and others as to the confidential nature of the work.

(Witness continues) The method in which the information gathered in the operation of the office at San Pedro is handled is, that information coming into that office is put into smooth form by Lt. Clayborne and copies, the original of his smooth form; with appropriate copies, are forwarded to

(Testimony of Elias M. Zacharias)

me in San Diego. Carbon copies of these reports are received at San Pedro. I am familiar with the files at the San Pedro office.

Whereupon it was stipulated that the papers in Government's Exhibits Nos. 5 and 6 for identification were from the office of the Naval Intelligence files.

Mr. Harrison: Now, if the Court please, we desire to offer in evidence report number designated as 833.

To which offer objection was made on behalf of the defendant Gorin upon the following grounds:

- 1. That no proper foundation has been laid for the introduction of said writing, for the reason that it has not been shown, and there is no evidence to prove, that said report, or any part thereof, relates to or is connected with the national defense of the United States.
- 2. That said report on its face shows that it is not a part of and is not connected with and does not relate to the national defense of the United States as that term is used in Sections, 31, [335] 32 and 34 of the Espionage Act.
- 3. That said report is not an instrument, writing, or document connected with or relating to the national defense as that term is used in Sections 31, 32 and 34 of the Espionage Act.
- 4. That said report on its face shows that it is but a communication by one officer of the United

(Testimony of Elias M. Zacharias)

"States Navy to another officer of said Navy reporting certain information acquired by said reporting officer concerning the acts and conduct of certain persons in the United States, and that it is not connected with nor does it relate to the national defense of the United States as that term is used in the Espionage Act.

5. That said report shows on its face that it is but the conclusion and opinion of the reporting officer relative to the acts and conduct of a certain individual or individuals and the transmission of said reporting officer to another officer of such conclusions and opinion, and that it is not anything connected with the national defense or relating to the national defense as that term is used in the Espionage Act under which this prosecution is being had.

6. That the introduction of said report in evidence would have the effect of making the judgment, opinion and conclusion of an officer of the United States Navy a standard whereby to determine the conduct of the defendants and other persons dealing with the United States Navy and permitting said officer to in effect legislate and create criminal statute.

7. That the introduction in evidence of said report would be to give to a regulation of the United States Navy relative to information acquired by its officers and employees the effects of a criminal

(Testimony of Elias M. Zacharias) statute, all in violation of the Fifth and Sixth Amendments of the Constitution of the United. States.

- 8. That no proper foundation has been laid for the introduction of said writing for the reason that it has not been shown, [336] and there is no evidence to prove, that a conspiracy was entered into to which the defendant Gorin was a party, and for the further reason that the corpus delicti has not been established.
- 10. That the said document constitutes hearsay testimony as to the defendant Gorin and is not binding on him.

Mr. Stone: May I join in that objection, your Honor, as to all the grounds stated by Judge Pacht, save grounds 8, 9 and 10?

The Court: As to grounds 1 to 7, the objection is overruled and exception allowed.

As to objections 8, 9, and 10—was 10 the last one?

Mr. Pacht: Yes, your Honor.

The Court: As to objections 8, 9 and 10, the objection will likewise be overruled, subject to a motion to strike at some later time in the event that the proper connection is not made, the order of proof being largely within the discretion of the Court. An exception is allowed as to those also.

The Clerk. That will be Government's Exhibit 5 (a).

Mr. Pacht: Contained in Exhibit 5?

Mr. Harrison: This number will be 5 (a), indicating that it is folder marked No. 5 for identification, and the specific exhibit is marked "(a)".

Whereupon the document referred to was received in evidence and marked "Government's Exhibit No. 5(a)."

The Court: Now, I presume you propose to make the same formal objection to each one of these proffers of exhibits, is that correct?

. Mr. Pacht: That is correct.

The Court: Then, in order to save counsel the burden of repeating his objection, may we not have a stipulation on that subject, and a stipulated ruling?

Mr. Harrison: As far as the Government is concerned, we are perfectly willing that the objection heretofore made shall be [337] deemed as applying to the offering of each and every one of these documents.

The Court: And that the objection is overruled and an exception allowed as to each one?

Mr. Harrison: Yes.

The Court: Then, if there is any special objection to one particular document, that may be reserved and made at the time and ruled upon separately.

Mr. Pacht: Yes, but it is not necessary for me to urge objections to each separate report which

Mr. Harrison intends to introduce from this volume?

The Court: You will not be so required, provided your objection is on the ground already stated.

Mr. Pacht: Yes.

The Court: If you have a distinct and separate objection to one of these, you must make it specifically.

Mr. Pacht: Yes.

Mr. Stone: And that applies, of course, to the defendant Salich as well, your Honor?

The Court: The same ruling and the same stipe ulation will be accepted as to the defendant Salich.

Mr. Stone: That is satisfactory,

.The Court: Is it so stipulated?

Mr. Stone: Wes.

Mr. Pacht: Yes.

Mr. Harrison: So stipulated, if the Court please.

[338]

(Exhibits set forth hereinafter: Government's Exhibit No. 5(a), also referred to as report No. 833 together with other exhibits of a like nature, consisting of reports selected from those in Government's Exhibit No. 5 and 6 for identification, all of which were read to the jury are set forth verbatim hereinafter, where all of such reports are listed and quoted fogether.)

Whereupon there was offered and received in evidence, subject to the objection and exception

heretofore noted, report No. 841, which was marked "Government's Exhibit No. 5(b)".

The witness Zacharias was temporarily excused from the stand and

# G. V. DIERST

a witness on behalf of the Government was recalled and testified:

# Direct Examination

By Mr. Harrison:

Q. Mr. Dierst, I desire to call your attention to Report No. 889 set forth in Government's Exhibit No. 5 for identification, and I will ask you what Mr. Salich said to you relative to that report. This statement, or conversation, as I recall, occurred on December 10, 1938, at the office of the Federal Bureau of Investigation.

Mr. Pacht: Before Mr. Dierst answers that question, this is going back again into conversations had with Salich, and therefore, I am obliged to make an objection upon the ground that the conversation was had out of the presence of Mr. Gorin, and is not binding upon him, and is not binding upon Mrs. Gorin.

The Court: May it be stipulated, counsel for the Government, that the same objections and the same rulings may be considered as made to this portion of this witness' testimony as the objections and rulings on the previous portion?

Mr. Pacht: And an exception.

The Court: And an exception allowed? [339]
Mr. Harrison: So stipulated, if the Court please.

The Court: Very well.

The Witness: In connection with this report, No. 889, Mr. Salich advised me that he had given the contents and substance of that report to Mr. Gorin, but that he had not furnished the name of Mr. Shively to Mr. Gorin, which was mentioned in the report.

#### Cross Examination

By Mr. Pacht:

I think, in connection with another report, he mentioned that he did not give the address of a party. That is in connection with report No. 859, where he stated that he did not furnish Gorin with the address of Simons. At first Mr. Salich gave me the general conversation that he had had with Gorin, contenting himself with saying, "I only gave him information with respect to Japanese activities." I demurred to that and said "Well, I would like to have you look over each one of these reports and show me specifically as to what you told Gorin regarding each one of these reports." We sat down and made a memorandum opposite each numbered report as to what Salich said about it, as to the first reports which were reviewed. Subsequently, Mr. Salich was asked about the specific reports in the files. The specific reports are designated and referred to on this memorandum which is Government's Exhibit No. 4. I would take Government's

Exhibit No. 5, for identification, which is the onionskin copy of the Naval Intelligence reports, and we looked for instance at report #889 and in substance I would say to Mr. Salich, "Well, what can you tell me about that?" Whereupon Mr. Salich told me what he had done with reference to that report, and I wrote sufficient information on there so that at a subsequent time I would have a clear understanding of what was said in connection with the particular report which I asked him about. I made a mention there of it, if he told me that he turned the information over, or any of the information. With reference to report No. 889, I wrote in there "Salich [340] states he did not furnish Shively's name to Gorin". Mr. Salich subsequently inserted in there that he did not remember—inserted the word "remember," and also changed it to "furnishing," that is, he changed the word "furnish" to "Furnishing". After this memorandum of mine, Government's Exhibit No. 4 was written, we went over it paragraph by paragraph, and wherever he thought a correction should be made or a word written in, I gave him the liberty to do it and he did it. .

### Redirect Examination

By Mr. Harrison:

My memorandum does not contain everything. My memorandum contains only such information or what I thought was sufficient information to refresh my memory at a future time in connection with the report, and in making that memorandum the report

was furnished to Mr. Salich who read it over and he was asked as to whether he gave the information in that report to Mr. Gorin, and he replied that he had given the information to Mr. Gorin, but that he had not given the information of Mr. Shively's name to Mr. Gorin. He excepted that from his statement.

### Recross Examination

By Mr. Pacht:

Q. Well, Mr. Dierst, I want to invite your attention to the fact that in other parts of this statement wherein Salich stated that he gave the report, or the information about the report, you wrote that fact down. For instance, opposite No. 854, you made this notation: "No specific recollection about this, but that he might have mentioned it to Gorin."

Or, opposite report No. 973: "Salich gave Gorin information about Louis Ritchie as a possible Japanese spy—" et cetera.

Now, I ask you if after Salich told you that he gave the information about this report No. 889 you had him go back to your statement and correct what was stated opposite that number? [341]

A. At the time he was going over these statements he had the report there, referred to it, and made the corrections in light of the report.

Q. But of course he made no correction about this particular report 889 in writing there, except as indicated on the report?

A. Except as indicated by me.

Mr. Pacht: Except as indicated on your statement, Government's Exhibit No. 4, instead of the report.

The Witness: That is correct.

Mr. Pacht: I take it the answer is to the question as amended.

The Court: Let us straighten that out so that there may be no misunderstanding in the minds of the jury.

You meant that by your statement, did you, Mr. Salich made no correction other than the changes indicated by you in connection with the word "remember" and the word "furnishing", which changes were not made upon the face of the report itself or a copy thereof, but were made on the face of your memorandum? Is that correct?

The Witness: That is correct.

The Court: Now, before you leave the stand, Mr. Dierst, as we have a lot of reports here, and the Court and jury want to know the facts, as I understand it, you only attempted to put down on your written memorandum, which is Government's No. 4, what we might describe as the highlights of your conversation with Mr. Salich?

The Witness: That is correct.

The Court: One more question.

Did Mr. Salich during that conversation at any time tell you that he gave you in the conversation statements of everything that he in turn told Mr. Gorin, or did he say that he was giving you what

he then remembered, or was the subject matter not discussed?

The Witness: Mr. Salich had advised me that he had given the information contained in those reports to Mr. Gorin. He did not [342] make any mention about relying upon his memory.

#### Recross Examination

By Mr. Stone:

Throughout the interview with Mr. Salich at our office at 810 South Spring Street, on December 10th, I kept repeating to him when he would make his replies, asking him as to whether he had given the information and the contents of that particular report, tying him down to a specific admission as to whether he did or whether he did not give the information in these reports. I did that with each of the reports mentioned in my notes, Government's Exhibit No. 4. In connection with Report No. 889, I cannot give verbatim the question which I asked Mr. Salich, nor can I give verbatim the question which I asked in connection with any of these other reports, but I can state that the substance of the question, throughout the interview, was as to whether he had turned over the information and the contents of that particular report to Mr. Gorin. In connection with report 889, Mr. Salich read the report over and advised, or told me, that he had given the contents of that report to Mr. Gorin, but that he had not mentioned the name of Mr. Shively to Mr.

Gorin. I did not put down in my notes the fact t'at he told me he had given the remainder of that record to Mr. Gorin. The fact that I put down in my notes that he specifically excepted Mr. Shively's name was sufficient to refresh my recollection in connection with that particular case, and also having in mind the specific reason of why I asked him about that report.

### Recross Examination

By Mr. Pacht:

Mr. Salich told me that he had given informas tion concerning each of these reports to Mr. Gorin, unless I otherwise qualified it. There were reports which Mr. Salich definitely denied that he had turned over or had given the substance of, or any information about, to Mr. Gorin. I have qualified that throughout my testimony [343] in connection with the specific reports that have been mentioned. When I interrogated Mr. Salich with respect to report No. 518, he told me that was information which he received from Mr. Gorin. There were two instances which Mr. Salich selected and said that the information in the file came from Mr. Gorin. He leafed through the reports and selected out those two reports, to show me that he had received information from Mr. Gorin, which information he stated that he had turned over to the Navy Intelligence. He did not tell me that in his contacts with Mr. Gorin he was seeking information from him which

would be useful in his work in the Naval Intelligence; he stated nothing to that effect, other than has been stated in these reports, which were dated early in June and May of 1938.

#### Recross Examination

By Mr. Stone:

Mr. Salich did not tell me that Commander Roachefort had authorized him to trade information with Mr. Gorin. He mentioned the fact that he had discussed his contact with Mr. Roachefort and that the matter was more or less dropped. He did not say that Mr. Roachefort had authorized him to give information to Mr. Gorin, I did not telephone Commander Roachefort at any time during my conversations with Mr. Salich. I do not recall telling Mr. Salich that I had telephoned Commander Roachefort at any time during my conversation with him. Mr. Roachefort's name was mentioned several times during the conversation, more or less in the preliminary examination of Mr. Salich in which we were leading up to the specific reports, going over the specific reports. His name was not mentioned in connection with any other reports other thanabout the only place that his name was mentioned was when Mr. Salich advised that he had taken this matter up with Mr. Roachefort when the matter first-when he first contacted Gorin or Gorin had first contacted him. The substance of the conversation was that when Mr. Gorin had first contacted

him, Mr. Salich had advised Mr. Roachefort of what had transpired, and Mr. [344] Salich said that Mr. Roachefort more or less let the matter die out. Mr. Salich told me that he told Mr. Roachefort that Gorin had contacted him and made a proposition to him about turning over information and had received an offer from Mr. Gorin of \$30 or \$40 a month for this information, and that he had advised Mr. Roachefort of this fact. He never specifically said what Mr. Roachefort's reply was other than that the matter just more or less died out. Mr. Salich did not tell me that Mr. Roachefort had authorized him to give to Mr. Gorin information of the type found in newspapers, but that the next time he went to see Mr. Gorin he should take Mr. Stanley with him. I don't know whether anybody else was in the room during the time M1. Salich was telling of his advice to Commander Roachefort of the contact he had made and of the proposition.

# ELIAS M. ZACHARIAS,

witness for the Government, resumed the stand.

There was then offered and received in evidence, subject to the objections and exceptions above noted, documents marked "Government's Exhibit No. 5 (c)".

Objection overruled. Exception allowed.

There was then offered in evidence Government's Exhibit No. 3 for identification, to which offer de-

fendants objected upon the ten separate grounds of objection heretofore urged to the introduction of Government's Exhibit No. 5 (a).

Objection overruled. Exception allowed.

Whereupon there was offered and received in evidence, subject to the objection of the defendants heretorore noted, report No. 889, said report being marked Government's Exhibit No. 5 (c).

Mr. Harrison, the United States Attorney, then proceeded to read to the jury Government's Exhibits 5(a), 5(b), 5(c), and No. 3.

(Witness Zacharias continues) [345]

The words "Memo for DIO", appearing at the top of Government's Exhibit No. 5(a) Report 833, mean, as to the initials, District Intelligence Officer. The initials "J.A.C.L." appearing on the same exhibit is an abbreviation used by my office to designate "Japanese-American Citizens League". The word "Nisei" appearing on the report in my office is a Japanese word meaning second generation and to designate American citizens of Japanese parentage.

Whereupon there were offered and received in evidence, all subject to the objection and exception allowed as heretofore noted of the defendants, certain reports, all of which are physically identified, listed and described on the appropriate exhibit numbers given as follows:

Report No. 570 received as Government's Exhibit 6(a);

Report No. 560 received as Government's Exhibit 6(b);

Report No. 548, received as Government's Exhibit 6(c);

Report No. 546 received as Government's Exhibit 6(d);

Report No. 536 received as Government's Exhibit 6(e);

Report No. 535 received as Government's Exhibit 6(f);

Report No. 534 received as Government's Exhibit 6(g);

Report No. 532 received as Government's Exhibit 6(h);

Report No. 530 received as Government's Exhibit 6(i);

Report No. 529 received as Government's Exhibit 6(j), as to the first paragraph only;

Report No. 528 received as Government's Exhibit 6(k);

Report No. 525 received as Government's Exhibit 6(1);

Report No. 519 received as Government's Exhibit 6(m);

Report No. 514 received as Government's Exhibit 6(n);

Report No. 507 received as Government's Exhibit 6(o);

Report No. 505 received as Government's Exhibit 6(p);

Report No. 504 received as Government's Exhibit 6(q);

Report No. 503 received as Government's Exhibit 6(r);

Whereupon there were read to the jury Government's Exhibits [346] 6(a) to 6(r), inclusive (the text of which is hereinafter set forth as noted in prior parathentical notes in this Bill of Exceptions).

(Witness Zacharias continues)

The reference in Government's Exhibit 6(h) to Rafu Shimpo is a reference to a newspaper published in Los Angeles, and the word itself means "Los Angeles Newspaper." I understand the Japanese language. The newspaper is published in both the Japanese language and the English language. It is a daily. The initials "IJA" appearing in the reports mean "Imperial Japanese Army". The symbol "Col." is an abbreviation for the title Colonel. The initials "O. S. K." refer to a steamship company by the name of Osaka Shosen Kaisha. Little Tokyo is an area in which a great many Japanese reside in Los Angeles. "Abacus" means a small board with a number of beads on it used in computations in Japan and China. The word "issei" means the first generation and refers to those people born in Japan. The word "nisei" is a Japanese word meaning the second generation and refers to those American citizens of Japanese parentage.

Whereupon there was offered and received in evidence and read to the jury, subject to the objection and exception of the defendants heretofore noted, Report No. 495, received and marked in evidence as Government's Exhibit No. 6(s).

Whereupon there was offered and received in evidence, subject to the objection and exception of the defendants heretofore noted, certain other reports from the files of the Naval Intelligence, and all being a part of Government's Exhibits 5 and 6 for identification, and which were marked as exhibits, the report numbers and exhibit numbers being as listed below, and each of which was read to the jury as it was introduced in evidence, said report numbers and exhibit numbers being as follows:

Report No. 495 received as Government's Exhibit 6(s); [347]

Report No. 489 received as Government's Exhibit 6(t);

Report No. 482 received as Government's Exhibit 6(u);

Report No. 480 received as Government's Exhibit 6(v);

Report No. 479 received as Government's Exhibit 6(w);

Report No. 477 received as Government's Exhibit 6(x);

Report No. 472 received as Government's Exhibit 6(y);

Report No. 469 received as Government's Exhibit 6(z);

Report No. 466 received as Government's Exhibit 6(aa);

Report No. 465, received as Government's Exhibit 6(bb);

Report No. 439, received as Government's Exhibit 6(cc);

Report No. 435, received as Government's Exhibit 6(dd);

Mr. Harrison: Now, if the Court please, the balance of the documents that we desire to offer in evidence, if I remember the record correctly, should only be offered as to the defendant Salich. They are brought in under a written statement, or a writing, that was introduced in evidence—it was introduced under conditions that it was only to apply to the defendant Salich—so I assume that the documents referred to would also have the same effect.

The Court: Very well. If you will notify us when you discontinue with that particular series.

Mr. Harrison: The balance that I shall offer will be of that series.

The Court: Gentlemen of the jury, so far as concerns the balance of these reports, which the Government is about to introduce, you are not to take them into consideration, so far as concerns the defendants Gorin, either or both. They are introduced merely as binding upon the defendant Salich.

Mr. Harrison: If the Court please, I now offer in evidence under that ruling No. 1145, bearing date 25 November, 1938.

The Court: It may be received, subject to the objection on the part of the defendant Salich, and

the same ruling. [348]

Whereupon there was received in evidence and read to the jury, all subject to the objection and exception of the defendant Salich, the following identified reports with the exhibit numbers as listed (the text of said exhibits appearing hereinafter), all as follows:

Report No. 1145, received as Government's Exhibit 5(d);

Report No. 1139, received as Government's Exhibit 5(e);

Report No. 1133, received as Government's Exhibit 5(f);

Report No. 1132, received as Government's Exhibit 5(g);

Report No. 1130, received as Government's Exhibit 5(h);

Report No. 1129, received as Government's Exhibit 5(i);

Report No. 897, received as Government's Exhibit 5(j);

Report No. 1110, received as Government's Exhibit 5(k);

Report No. 1104, received as Government's Exhibit 5(1);

Report No. 1081, received as Government's Exhibit 5(m);

(Witness Zacharias continues): With reference to report #480, Government's Exhibit No. 6(v), where it reads "References: (a) Our (Adio) Serial No. 215 of 11 Mch. 1938", the "Adio" represents the Assistant District Intelligence Officer, and refers to a memorandum from my branch office at San Pedro. The portion of it which reads "(b) Com9 card 156, 25 May 1938," refers to a memorandum received from the Commander of the Ninth Naval District. The number under "A" number "215" refers to another report of the Assistant District Intelligence Officer at San Pedro. This report is one of a series of reports.

Mr. Pacht: If the Court please, so that we may not have any misunderstanding, I take it Mr. Harrison will stipulate with us that this serial report No. 215, and this report No. 156 referred to in this report No. 480, which Commander Zacharias has just read, are neither of them any report mentioned in the indictment nor is it charged that either of those two numbered reports were in any way [349] communicated to us?

Mr. Harrison: They are not mentioned in either one of the substantive counts of the indictment and we have made no charge that they have been communicated.

Mr. Pacht: All right.

The Court: The stipulation will be received.

It was further stipulated that the pencil figures appearing on the bottom of Exhibit No. 6 (aa) were filing symbols in the office of the Naval Intelligence and that where such symbols occur on any of the other reports in evidence, the same stipulation is in effect.

(Witness continues) The words "Personal File" appearing on Report No. 469, Government's Exhibit No. 6(z) refers to the personal file of the subject mentioned in the report. One copy of the report which I have read and which were read in my presence yesterday was filed in my office at San Diego. Those reports which come in from the Assistant District Intelligence Officer, as all of that kind do, those which come in unsigned are forwarded to Washington to the Office of the Naval Intelligence. Those which are signed are in some instances forwarded to Washington, as the others are. In all cases, one copy is kept in the files at San Diego.

# Cross Examination

By Mr. Pacht:

The first meeting at the office of the Naval Intelligence to which I refer took place shortly after I took charge of the office, which was May 13, 1938. I named those who were employed in the Naval Intelligence Office and who were present. The others present were Intelligence Reserve Officers who are

(Testimony of Elias M. Zacharias.) connected with the office but not employed or paid by the office. Exclusive of those employed in the office. I would say there were between ten and fifteen others present. Reserve officers are people who are in civil life and subject to be called back for Naval duty in the event [350] of hostilities. At the first meeting that I spoke of, I made an address to the group. It was at the Naval Intelligence Office at San Pedro. The other meeting to which I referred previously was not a second such meeting. It was not the second meeting that I had with the group but was the second meeting with which I have a direct recollection. A group of the same type of persons previously described were present, and approximately the same number.

The regulations under which the office of Naval Intelligence operates are in writing, and are promulgated by the Chief of Naval Operations. Whatever is done by me or by my Lt. Commander or by any investigator employed by the office of Naval Intelligence is done pursuant to some written regulation of the Navy Department. During the years 1937 and 1938 there were such written regulations.

Referring to Report No. 536, which is Government's Exhibit No. 6(e), which reads:

"Ohtani, Yoshachi. He will be under Minister S. Koshida, stationed at Mexico City, and who is Minister to six countries from Mexico southward. Ohtani succeeds T. Umimoto, called back to the for-

(Testimony of Elias M. Zacharias.)
eign office; reference 'Ken', article on Japanese
spies in the first issue."

The reference there is to an article in the magazine named "Keh", the issue of April, 1938. The article in "Ken" magazine entitled "Exposing the Peril of Panama" which you are showing me, is the article that I had reference to.

Whereupon the article referred to was marked Defendants Gorin and Salich Exhibit A for identification.

Whereupon defendants Gorin and Salich moved to strike the testimony of Commander Zacharias concerning the address made at the office of the Naval Intelligence, and all his testimony relating to each of the addresses upon the ground that the duties, the powers and the matter of functioning of the office of Naval Intelligence is a matter which is subject to and governed by written regu- [351] lations of the Navy Department.

Motion denied. Exceptions allowed.

# Redirect Examination

By Mr. Harrison:

The meeting where the various Naval Reserve Officers were present was not an open public meeting. It was restricted. In addition to Lt. Clayborne, Mr. Stanley and Mr. Salich, all of whom were at that time regularly attached and employed in the office of the Assistant District Intelligence Office at San Pedro, there were present a group of Intelli-

(Testimony of Elias M. Zacharias.)
gence Reserve Officers of the United States Navy.
I would prefer not to give their names as it would
be prejudicial to the national interests.

#### Recross Examination

# By Mr. Pacht:

It was in my own control and discretion as to who was to be present at this meeting and who was to be excluded.

## Redirect Examination

### By Mr. Harrison:

When I mentioned that we operate under written regulations, that also includes written orders given to us by our superior officer. There is only one set of regulations, I am referring to the United States Navy Regulations. There are certain regulations concerning the Navy Intelligence that are not open to the eyes of the public and which under our instructions we are not permitted to communicate to anyone outside of the Naval Service.

The several reports from the files from the office of the Naval Intelligence offered and received in evidence over the objection of the defendants hereinbefore noted and which were read to the jury and referred to in the testimony of Commander Zacharias, are in words and figures as follows: [352]

# GOVERNMENT'S EXHIBIT No. 5 (a)

833

7 September 1938

Memo for Dio

Subject: Activities of Japanese.

Enclosure: (A) Memo of Dio dated 31 August 1938.

- . 1. Very little information could be obtained by this office on the subject mentioned in Enclosure (A). Three American-born Japanese, George Ohaski, Paul Nakadate and George Suzuki, all resigned very recently from the J. A. C. L., because they were accused of indulging in communist activities. Dr. Miki Nakadate, elder brother of Paul Nakadate, is still in Los Angeles and is very strong in the Los Angeles branch of the J. A. C. L. According to the informant there is news in Los Angeles relative to any trouble in San Diego, and the Rafu Shimpo stated, the only information they had was of the resignation of the three above mentioned people from the J. A. C. L., due to communist activities.
  - 2. This office is of the belief that the informant could discover more concerning this matter but he lacks the energy and the ingenuity to get it.

H. deB. CLAIBORNE.

### GOVERNMENT'S EXHIBIT. No. 5 (b)

841

9 September 1938

Memo for Dio

Subject: Japanese activities.

Reference: (a) Adio Memo No. 833 of 7 Sept 1938, Activities of Japanese.

- 1. Further information concerning the inter-Japanese strife reveals the following:
- 2. George Ohaski is reported to have made the state- [353] ment that he belonged to a group which was neither Fascist nor Nazi. Several Japanese took this to mean that he was a Communist. Paul Nakadate and his friends thereupon beat up Ohaski and forced him to sign papers stating that he was a Communist. Ohaski then went to Mr. Chino, who is reported to be a sort of 'welfare officer' for the Japanese of the San Diego area, and asked him to help him, Ohaski, clear up the mess. The subsequent troubles all came about due to the above facts. The report in the newspapers concerning all these people was reported to have been made by Paul Nakadate's father in an effort to whitewash his son. It is further reported that the entire Nakadate family have peculiar ideas and some of the Nisei in this vicinity are suspicious of them. Mrs. Nakadate, the mother, is reported to be the niece of an influential Japanese Admiral.

H. deB. CLAIBORNE,

# GOVERNMENT'S EXHIBIT No. 5 (e)

889

23 September 1938

Memo for DIO

Subject: Suspected Communists at North Island.

Reference: (a) Adio Memo No. 849 of 13 Sept 1938 to Dio.

Enclosure: (A) Dio Memo of 20 Sept 1938, ND11/P9-2 to Adio.

1. The information contained in reference letter was phoned in by Harry Shively, 404 South Mariposa, Los Angeles.

- 2. Shively was contacted and states that he was formerly in the Navy, receiving a Bad Conduct Discharge October, 1930. Since this time he has been employed in various cities all over the United States, most recently in Phoenix, Arizona, as a special deputy sheriff. He is now employed as a special night watchman by [354] the Nick Harris Patrol.
  - 3. A short time ago he dug up an old ship-mate named Johnnie Means, 1528 West 145th Street. Means told him he was working for the WPA and when Shively told Means he had been working as a special deputy and special policeman, Means accused him of being a strike buster and told him that he, Means, wanted nothing to do with Shively, as he, Means, was a member of the Communists Party. Shively

the gar.

asked Means where he could get in touch with Bert Simmons and Rayburn, first name unknown. Means told him they wanted nothing to do with him and would not tell him where they were. Shively says he located Simmons and Rayburn in San Diego but he has not seen them. Simmons works on North Island and is a civil service employee in the aircraft division; he is a Communist and belongs to the I-V(S), USNR, San Diego and operates on Eagle Boat #34. Rayburn is also reported to belong to the Communists in San Diego and is an officer in the Party.

4. Shively is very anxious to have his Bad Conduct Discharge fixed up and it is my opinion he is using this means to assist him in the matter. He requests that this investigation be carried on in San Diego as he claims that if Johnnie Means is approached he will know, that Shively is the one who reported him.

H. deB. CLAIBORNE.

### GOVERNMENT'S EXHIBIT No. 5 (d)

1145 25 November 1938 Subject: Count Kiyoski Kuroda and Shinzo (?) Goto; information on.

1. Subject individuals are now at the Ambassador Hotel, [355] having registered there on Tuesday, 22 November, 1938. They are regis-

tered from Tokyo, Japan. Count Kuroda is in Room 506 and Goto is in Room 406. Goto has done all the telephoning and all the talking. He has called the N.Y.K. Line, Yoshitsugi Fujino, the Japanese Consulate, and George Nakamoto of the Rafu Shimpo.

# GOVERNMENT'S EXHIBIT No. 5 (e)

1139 23 November 1938 Subject: Lieutenant Commander Ko Nagasawa, IJN and Lieutenant Commander Shigeshi Uchida, IJN.

1. This office has heard a rumor that Lieutenant Commander Nagasawa, stationed at present in Los Angeles, will, upon the completion of his tour of duty, be relieved by Lieutenant Commander Uchida, who is now stationed in Washington.

# GOVERNMENT'S EXHIBIT No. 5. (f)

1133
22 November 1938
Subject: Japanese War Saving Fund—Amount
contributed to, in Los Angeles area.

1. It is reported that the Japanese Association has collected \$4,057 this month for the Japanese War Saving Fund. This is supposed to be the third month of their saving collection campaign, [356]

### GOVERNMENT'S EXHIBIT NO. 5 (g)

1132
Subject: Kato, Futashi—Reported inventions of.

- 1. Subject individual, a chemical professor in a girls' college in Tokyo, has recently perfected a fiber helmet. This fiber is reported to weigh only about one-fifth of the steel helmet. It is further intended to use this material for gloves, etc., particularly for men going through barb wire entanglements.
- 2. It is reported that the manufacture of these fiber helmets and gloves has already started.

# GOVERNMENT'S EXHIBIT No. 5 (h)

1130 22 November 1938 Subject: Oka, Shigeki—Reported activities of as a "Red."

1. Subject individual, owner of the Golden Gate Printing Shop in San Francisco, has a reputation amongst Japanese of being an active "Red." Two years ago he was reported as having a very hard time in getting into Japan for

a visit. However, at the present time Takemitsu Masuno frequently refers to him as a close friend.

2. His daughter is now in Japan and is reported to have recently married a Japanese naval officer.

# GOVERNMENT'S EXHIBIT No. 5 (i)

1129 22 November 1938 [357] Subject: Kawamura and Kawaguchi—Contacts of in Los Angeles.

1. It is reported that two Japanese named Kawamura and Kawaguchi, who work on the Asama Maru, contact Takemitsu Masuno and Lieutenant Commander Ko Nagasawa, IJN, every time this vessel is in San Pedro. They also have been known to contact Dr. Ajiju Amano and Wataru Kitagawa occasionally.

# GOVERNMENT'S EXHIBIT No. 5 (j)

897 23 September 1938

Memo for DIO

Subject: Activities of Japanese.

1. Mrs. Furusawa is now on a talking tour of Southern California, the object of which is to get donations for the Japanese.

2. Iseda, Gyosuke is now on a talking tour of Central California for donations for the Japanese.

H. deB. CLAIBORNE.

### GOVERNMENT'S EXHIBIT No. 5 (k)

1110

16 November 1938

Memo for DIO

Subject: Suspicious activities of a United States Navy sailor and Japanese girl. [358] Reference: (A) Adio Memo 1083 of 10 November; and Adio Memo 1093 of 14 November.

1. In addition to the reports submitted in reference (a), final investigation of this case revealed the following:

"The car involved was registered to Mrs. Sakae Yamamoto who lives and works at the Golden Nursery, 1908 Redondo Blvd., Gardena, California. Further investigation revealed that on the day in question, the car was used by Mrs. Yamamoto's sister-in-law, Rose Asahira. The latter girl had been married once, is about 20, rather attractive, came down from Seattle about a week ago, now lives with Mrs. Yamamoto, and since 14 November has been employed as vegetable salesgirl at 54th Street Market, Vermont and 54th. This girl readily admitted the events of the day, explaining that the sailor involved was Donald Tucker, attached to the U. S. S.

Henderson: She met him in Eugene, Oregon, somewhat recently and fell madly in love with him.

Knowing that the ship was about to be gone for two years she wanted to spend as much time as possible with Tucker. Not knowing if she would be able to catch Tucker at San Pedro Navy Landing, she wrote a long letter to him intending to leave the letter for him. She inquired for him at the landing and soon afterwards Tucker came ashore. They sat in her car for a while and she handed her letter to him personally which he read sitting in the car. She is emphatic in her statement that she did not see anyone approaching her car before she drove off. After leaving the landing the two registered at the California Hotel and spent. the night together.

2. The girl was unquestionably in love with Tucker and begged that, if it was against the regulations for him to go with girls other than his own race, not to do anything to him, but punish her. Stated pleadingly that she couldn't help falling in love and that she would do anything if only Tucker goes unpunished [359] for whatever he is accused of.

3. A copy of this memorandum has been forwarded to the Commanding Officer of the U.S.

S. Hendersen.

H. deB. CLAIBORNE.

### GOVERNMENT'S EXHIBIT No. 5 (1)

1104

15 November 1938

Memo for DIO

Subject: Secret dinner at Shogatsu Tei restaurant in L. A.

- 1. On Sunday, 13 November, a dinner was given at the Shogatsu Tei restaurant in Los Angeles. The following people attended: Lieutenant Commander Ko Nagasawa, IJN, Takemitsu Masuno, T. Matsuzaki and Kychei Watanabe and also several officials of the Sumitomo Bank. At this dinner, all doors were closed and the waitresses were told not to come into the room.
- T. Matsuzaki is the son of the owner of 2. the Morinaga Candy Co. and is now agent in Los Angeles for Aja-no-moto. He claims that he is a reserve lieutenant of the Japanese Army, that his father is a colonel on active duty, that his mother is head of the Aikoku Fujinkai in Tokyo. He is about 5'5", 120 pounds, very high cheek bones, slender face and approximately 28 years old, has been in the United States approximately eighteen months, speaks mediocre English, travels extensively, particularly on the West Coast from Seattle to Mexico City. His card shows that he has been in mail communication with Sataro Minami of the Holland Hotel in Seattle. [360]

3. It is noted that Masuno attended both dinners (see Memo No. 1103, this date).

H. deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT No. 5 (m)

1081 10 November 1938

Subject: Japanese activities.

1. All vessels of the Yamashita Line usually anchor as close as possible to the boundary between the general and naval anchorages in San Pedro Harbor. They are frequently seen photographing the fleet from these ships.

2. The Nippon Maru, on or about 1 August 1938, was anchored along the boundary mentioned above and a Japanese on board was taking pictures of the United States Reet with,

telescopic lens.

3. On or about Tuesday, 1 November, the U.S. S. Wright with a squadron of PBY flying boards was conducting maneuvers, based at Reeves Field, Terminal Island. On that day there was a large crowd of young Japanese gathered along the fence at the West end of the field very interested in all activities.

4. On October 26, 1938, at about 0715, a number of Japanese were noticed taking various pictures of the Wilmington refinery of the

Texas Oil Company.

This office is constantly receiving such reports, as the above, particularly mentioning the photographing of military planes at Mines Field and the Reeves Field. Further, the purchase by the Japanese of air views of the San Pedro area of oil [361] fields and refineries, in California, unquestionably shows their interest in obtaining every bit of possible information concerning our defenses and vulnerable spots. In view of the fact that there is no law against such indiscriminate photographing of everything, government agencies are handicapped in their efforts to assure national security and it is recommended that the prohibited zones bill be placed in effect as soon as posible.

## GOVERNMENT'S EXHIBIT No. 6 (a)

570

28 June 1938

Memo for DIO

Subject: Activities of German-Japanese-Mexican people.

1. From data deduced from reliable informants and also from definite indications, it is becoming more and more apparent that Germany, Japan and Mexico are tied up together in espionage activities in this country. It is believed that the various German-American and

Japanese-American Chambers of Commerce are serving as centers of this work.

H. deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT No. 6 (b)

560 Memo for DIO [362] 27 June 1938

Subject: Japanese fishing boats.

1. The following information has come from a fairly reliable informant:

In June 1937 the Japanese fishing boat 'Flying Cloud,' which was registered to owner Matosuke Tsuida, San Diego purchased from Van Camp Sea Food Company, came into Ensenada from the South with a very heavy load of large gasoline drums. These drums were procured from the German freighter Edna, were landed in Ensenada and stored in a flour mill nearby. In September, 1937, the same procedure took place. The keeper of this mill was an Italian who kept it under a guard of two men day and night. These drums were about twice the size of our own gasoline drums. The drums ends were painted yellow, and the only lettering was the stenciled initials A.H. In October, 1937, the contents of one of these drums was secured and the substance tested. It was found to be not gasoline but an acid substance which when

mixed with salt water turned into minute bub-

(Testimony of Elias M. Zacharias.)

bles, just under the surface of the water and attacked Golently any metals placed in this solution. The flour mill in which these drums were stored burned down the day before an Immigration officer was shot on the border while trying to stop two men from crossing into the United States. In the fall of 1937 a vessel in the molasses trade, between the Hawaiian Islands. and the United States which bore an Indian name, was loading molasses at a sugar mill in Hawaii, when it was reported that some of this substance was dumped overboard on a rising tide by a Japanese fishing boat. The plates of this vessel were supposed to have been 25% eaten during the period of her loading. In February, 1938, two Japanese were arrested by Fish and Game Commission for using acid near the jetty of Terminal Island to catch fish. The informant, suspicious of this, investigated immediately and believed this to be the same substance, that was used to eat away a large cable, one end of which was imbedded in the jetty. All of these facts [363] have not been checked as yet and an investigation will be conducted. Efforts will be made to obtain samples of this alleged acid. It is noted that this acid is supposed to come on German boats through the Panama Canal. If such drums are seen by the inspectors at Panama, a sample of their con-

tents should be taken. The drum should be examined with a possibility of an inner container. The fishing boat 'Flying Cloud' is reported to do little fishing and spends a great deal of its time in transporting the above-mentioned drums. She is reported to provision and fuel from the Sendai Maru. When approaching American ports she flies the American flag, but upon getting out to sea the ship always flies the Japanese flag. Her radio set is capable of reaching Japan and they have frequent communications with that country. It has been learned that all of these fishing boats are required to carry American licensed radio operators. It is believed that a few reliable radio operators could be found on these boats or that possibly several reliable operators could be placed on the larger tuna clippers. There is aboard the 'Flying Cloud' a Japanese who is an expert radio operator and does most of the communication work. The licensed American radio operators is not required to do anything. It is further reported that large Japanese clippers frequently exchange boat crews and particularly so when planning to come to the United States from Mexico.

2. Upon the occasion of the Astoria and Quincy joining the Fleet in Long Beach, a Japanese freighter left her berth from Wilmington and stood to sea in the direction of these vessels. She took no usual commercial course but

stood in such a direction as to pass the cruisers close aboard. Two large cameras were used to photograph the cruisers. Three fishing boats left the Fish Harbor and stood out to meet the cruisers. These fishing boats distributed themselves in the following order: one stayed inside the breakwater, very near their expected anchorage, [364] and the other two outside the breakwater, a considerable distance apart and waited for the cruisers to pass.

3. Three weeks ago the second officer of a Japanese freighter joined some of his friends ashore, drove over to the edge of Reeves Field and took numerous pictures.

H. deB. CLAIBORNE.

#### GOVERNMENT'S EXHIBIT No. 6 (c)

548 Memo for DIO 21 June 1938

Subject: Masuno, Takemitsu

1. Subject is positively identified as the agent for Nippon Suisan Kaisha, in Los Angeles, working for Fukuno. He keeps a permanent room at the Olympic Hotel which he rarely uses as he is always away on what he calls fishing trips. He apparently does no work drives a nice car, is well dressed, and seems to always have money.

H. deB. CLAIBORNE.

### GOVERNMENT'S EXHIBIT No. 6 (d)

546

21 June 1938

Memo for DIO

Subject: Sonobe, Isukasa.

1. Sonobe left Los Angeles for San Francisco the morn-[365] ing of 21 June. San Francisco was informed immediately of his departure, He is scheduled to sail on the Chichibu Maru, on 22 June. San Francisco was also informed that Schobe had written a large air mail letter to Tateumi, the clerk at the Yamato Hotel, San Francisco.

H. deB. CLAIBQRNE.

# GOVERNMENT'S EXHIBIT No. 6 (e)

536

20 June, 1938

Memo for DIO

Subject: Ohtani, Yoshachi.

Reference: (a) Adio memo 522, 15 June 1938.

1. Subject former consul at San Salvador, now promoted to Charge d'Affaires at Panama, the new setup created a month ago. He will be under Minister S. Koshida, stationed at Mexico City, and who is Minister to six countries from Mexico southward. Ohtani succeeds T. Umimoto, called back to the Foreign Office; reference 'Ken' article on Japanese spies in the first issue. Ohtani made the statement that the

Amano Maru 'has finished its work off Panama and has shifted to Chili.' The owner of the boat has lumber interests down in Chile. Ohtani wears glasses. He was scheduled to leave June 18, by plane, for Mexico City then going to Manzanillo and catch the N.Y.K. liner Bokuyo Maru, scheduled to sail from here Sunday, at 3:00 p. m., for the South.

2. Mashiko, T., claims to be managing director of the Kimbetsu Kagyo, a mining outfit of Tokio. This man was very reticent to talk but admitted that he was interested in mining throughout California and Nevada and he might possibly buy copper, [366] zinc, and etc. He will be in this country for several weeks and plans to pass through Joplin, Missouri, look into the zinc question. It is suspected that he has financial interests in mines in this country.

H. deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT- No. 6 (f)

535 Memo for DIO 20 June 1938

Subject: Nakata, Ben.

Reference: (a) Adio memo 507, 13 June 1938.

- 1. Further information relative to reference
- (a) is to the effect that subject is manager of the Branch Tokio Club in Vallejo.

H. deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT No. 6 (g)

534

17 June 1938

Memo for Dio

Subjects Notes on Japanese.

1. Sonobe, first name unknown, is expected in Los Angeles from the East on the 19th.

2. Fukuno, Hisamatsu, a representative of the NSK arrived by plane from Mexico City on the 16th of June. [367]

3. Saito, I., arrived by train from Mexico

yesterday.

H. deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT No. 6 (h)

532

17 June 1938

Memo for DIO

Subject: Nakamoto, George H.—Column in Refu Shimpo by subject appearing on 15 June 1938.

1. Mr. Nakamoto, the writer of the 'Off the Record' column of the Rafu Shimpo, has been very pro-Japanese and anti-American of late.

H. deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT No. 6 (i)

530

17 June 1938

Memo for DIO

Subject: Hirata, Masachika-Col., IJA.

1. Subject individual left Los Angeles on the morning of 16 June on the Daylight Lim-

ited for San Francisco. He will catch the Chichibu Maru there for Japan.

2. There is no further information available on Major Morita, mentioned in our Serial No. 519 of 15 June.

H. deB. CLAIBORNE. [368]

#### GOVERNMENT'S EXHIBIT No. 6 (j)

529

17 June 1938

Memo for DIO

Subject: Moriya, Sensuki and Ogura, Akira, Jr.—Activities of

Reference: (a) 11 ND #902 of 6-14-38.

1. Subject individuals represent the Ogura Oil Co. of Japan, the former being a chemical engineer and the latter a mechanical engineer and the owner's son. They arrived here on the Ogura Maru No. 1 on 10 March 1938.

#### GOVERNMENT'S EXHIBIT No. 6 (k)

528

17 June 1938

Memo for DIO

Subject: Okami, Dr. Shigaichi-Activities of.

1. Information has been obtained from an informant of this office that subject individual, while driving an eggshell blue Cadillac sedan with California License No. 3 Y 28 57, made a

trip through Northern California the first part of June and took 300 feet of film of the Bay area and the Coast on the way up. His address on Terminal Island is 190-1/2 Terminal Way, and he is said to have an extensive practice among the Japanese there.

2. The above mentioned film has been previewed by this office and contained nothing of

military importance.

H. deB. CLAIBORNE. [369]

# GOVERNMENT'S EXHIBIT No. 6 (1)

525

16 June 1938

Memo for DIO

Subject: Departure of Lieutenant Commander Ohtani and Lieutenant Commander Nagasawa, IJN.

1. Subjects left Los Angeles at 0830, 15 June, for an automobile trip through Yosemite, Yellowstone, Mount Ranier, and probably via San Francisco. They will be gone for two weeks and are driving a Chevrolet Coach, Washington, D. C. license No. DC 575-12.

H. deB. CLAIBORNE.

## GOVERNMENT'S EXHIBIT No. 6 (m)

519

15 June 1938

Memo for DIO

Subject: Arrival of Japanese officers.

1. Colonel Hirata, IJA, arrived Los Angeles
14 June on the 'Chief'. Major Morita did not
arrive with him. Hirata is at the Olympic Hotel.
However, he had made no reservations and is
not registered.

H. deB. CLAIBORNE

#### GOVERNMENT'S EXHIBIT No. 6 (n)

514

14 June 1938

Memo for DIO [370]

Subject: Imamichi, Junzo.

Reference: (a) Adio memo of 13 June 1938, Ser. No. 505.

1. Subject, who was reported to be staying at the Ambassador Hotel, stayed at the residence of the representative of the O. S. K. Line in Los Angeles, and is leaving this morning at 11:30 a. m., for New York on the 'Chief', where he plans to continue on to South America for business contacts down there.

HENRI deB. CLAIBORNE.

GOVERNMENT'S EXHIBIT No. 6 (o) 507 13 June 1938

Memo for DIO

Subject: Information on Japanese, Li'l. Tokio, Los Angeles, California

1. The below named Japanese are frequently seen in Li'l Tokio, Los Angeles, both together and separately, spending a great deal of money more than they apparently earn, and are suspected of being interested in intelligence work:

1. Ohara (female)—first name unknown: Lives at the Miyako Hotel and is studying beauty culture. She had a position on the Tatsuta Maru and was fired by that vessel in San Francisco supposedly for having a love affair on board ship.

2. A Japanese who owns the 'Montana Pig Ranch', near Long Beach, associates with all the included subjects and spends a great deal

of money.

3. Fujikawa, Kozo, manager of the French Sardine Cannery, contacts all arriving Japanese ships and is frequently uptown in Li'l Tokio with the included subjects. [371]

4. Nakata, 'Ben,' Eurasion, married to a Eurasian from San Francisco, is active in Li'l

Tokio with the included subjects.

5. Matsuyaka—(representative of Aji No Moto Company, lives at the Mayako Hotel. Is interested in photographic work and possibly.

might be Yamakaishi (Adio letter 508, 13 June 1938), or closely connected with this subject.

- 6. Yamakaishi—Recently a woman who is in the habit of frequenting Yamakaishi's room, Mayako Hotel, walked in unannounced one night and found him developing blueprints in pans of water using the before mentioned boxes of white powder (Odio 508). Yamakaishi was very furious in the intrusion and threw her out of the room. The paper being developed in the pans was not photographic work but definitely blueprints with a great many lines on them.
- 7. Takase, Masakazu, is living with Hazel Matsui in the Higoya Hotel, 210 North San Pedro Street, Los Angeles. Subject is in the dope business and sent Hazel, at his own expense to a hospital to cure her of the dope habit. She had acquired the dope habit while living with a Chinese dope peddler. They are both seen with the included subjects.
- 8. Jioshima—owns a chop suey restaurant in the basement of the Terminal Vegetable Market and Central Avenue and 8th Street and is apparently a contact man with incoming Japanese ships, the Japanese Consul and a great many higher-ups in Li'l Tokio. He is also noted with the included subjects.
- 9. Fujita, Masakatsu, 427 East 5th Street, owns the Brownstone and Oriental Hotels.

Spends a great deal of money and contacts in-

coming Japanese boats.

10. Hosonuma, Ginzo—owner of the Yedoya, which has two grocery stores, one at 2837 West Olympic Blvd. These grocery stores are suspected of dispensing dope and also senders [372] of information. He has been noted with included subjects.

2 11. Kida, Masataro, 228 East 1st Street, owner of Chop Suey Restaurant. Spands a great deal of money and is a friend of the included

subjects.

. 12. Nagasawa, Lieutenant Commander, IJN., relief for Ohtani, is being introduced in Li'l . Tokio by a Mr. Kitagawa (florist). They seem very friendly and Kitagawa plans to leave for Japan sometime in July. Nagasawa is at present paying a great deal of attention and buying presents for Chieko, a waitress at the Ichifuji restaurant. Chieko is married, but her husband is in Fresno. It has been noted that Nagasawa every morning, picks up the Rafu Shimpo and turns immediately to the vegetable quotation section and spends considerable time reading it. Nagasawa is reported to be of a much more serious turn of mind than Ohtani. Does not indulge in the drinking parties as did Ohtani, HENRI deB. CLAIBORNE.

GOVERNMENT'S EXHIBIT No. 6 (p) .

505

13 June 1938

Memo for DIO

Subject: Imamichi, Junzo.

1. Subject is Public Relations Director for the O. S. K. Line, and is reported to be staying at the Ambassador Hotel, Los Angeles, leaving next week for New Orleans via the Grand Canyon. He will continue his trip to Miami, New York, Buffalo, Chicago, St. Paul, Seattle, and San Francisco, in order to prepare the way for two new around the wold passenger vessels due to be completed the summer of 1939. A check has made on the sub- [373] ject and no one by that name was found to be at the Ambassador Hotel. A further check will be taken. HENRI deB. CLAIBORNE.

#### GOVERNMENT'S EXHIBIT No. 6 (q)

504

10 June 1938

Memo for DIO

Subject: Matsumoto (first name unknown)

Hirao, Jane.

Ohara, J.

1. Matasumoto and Hirao, who were the lifeutenants of Yamamoto in the Tokio Club in Los Angeles, are said to be in hiding in Stockton, California. They have not returned to

Japan as the Tokio Club had planned for them to do.

2. Ohara has been reported as leaving for Japan but it is believed that he also is probably in hiding with his two friends.

HENRI deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT No. 6 (r)

503

Subject: Report or meeting of the Far East Research Institute in Los Angeles on 9 June 1938.

- June 9 1938 [374] at the Olympic Hotel, in the rooms of the Los Angeles Chamber of Commerce, Yozo Yoshino, author of a 240-page book on the 'Abacus,' gave a lecture on the abacus to about ten people, including the adviser, Katsumi Mukaeda. The reasons for such a small attendance were (1) a lack of interest on the part of the nisei to the abacus and (2) the fact that most of them went to see the Electrical Pageant at the Coliseum in Los Angeles on that date.
- 2. Among the nisei present were two Sugahara boys and Sabura Tani, a prominent Japanese American Citizens League member. Incidentally, Tani spent a number of years in Japan studying in Japanese schools. During

the general conversation around the table before the lecture started, Tani mentioned to Mukaeda that he was going to ask Consul Ota for \$100 toward some sort of festival or convention fund, to which Mukaeda replied that Mr. Ota already had made out his check for that amount. During the rest of the conversation Mukaeda mentioned that there should be a closer union between issei and nisei and that they should get together often at joint meetings, to which Tani agreed.

The lecturer, Yozo Yoshino, was introduced by Mukaeda. It was revealed that Yoshino graduated from Wasoda University and was employed by NYK Line for a number of years. He gave his lecture in very halting English. His manner of delivery was uninteresting, unconvincing and uninstructive. The audience received the lecture with only mild curiosty and failed to grasp even the fundamentals of abacus operation. It is believed that Yoshino is not the type of man for this kind of lecture work and that he will not be successful, not only in American circles but among the Japanese as well. Yoshino will remain here until September and will give a course in abacus operation at one of the local Japanese language schools.

# GOVERNMTNT'S EXHIBIT No. 6 (s)

495

7 June 1938

Memo for DIO ..

Subject: Issei-Nisei-Bussei.

1. As far as can be ascertained the present situation exists amongst the above mentioned groups. The issei apparently have a strong allegiance to Japan and are attempting to influence the other two groups into the same feelings. The nisei, during grammar school and . high school seem to like their surroundings and are contented to be with the Americans in this country. However, upon entering college there is a gradual shift towards the issei ideas and quite a few definitely shift to a strong allegiance towards Japan. The bussei is the Young Men's Buddhist Association, which consists mainly of nisei. The JACL is mainly nisei and at the present time there are two groups in the JACL who are striving for control. The one group advocates a purely social organization, the other group advocates, strongly a civic organization with a closer union with the community in which they live. A third group of nisei, consisting of Hawaiian born Japanese, are attempting to organize and fight the JACL. The ideas of this group was to break the hold that certain questionable elements have in the JACL. These questionable elements are appar-

ently closely allied to the Tokio Club gang. The Tokio Club at present seems to have hard sledding as they have cut down on free meals to the Japanese unemployed. In the past, the Tokio Club fed the unemployed twice a day, atpresent it is only once a day. The unemployed Japanese in Los Angeles consists of a few older people of issei who spend their days hanging around outside the Tokio Club. The Tokio Club has instructed the smaller Japanese gambling houses that the high limit of their games will be 50¢. Two Japanese gamblers were found gambling in a Chinese gambling club and were [376] thoroughly beaten up by the Tokio Club gang. This was not because they were in a Chinese establishment, but because the Tokio Club has instructed the Japanese gamblers that they can only gamble in the Club. · HENRI deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT No. 6 (t)

Memo for DIO

489

6 June 1938

Subject: Lieutenant Commander K. Magasawa and Lieutenant Commander I. Ohtani, IJN.

1. Nagasawa arrived at Olympic Hotel during the evening of Sunday, 30 May. It is definitely reported that he will relieve Ohteni.

Ohtani's orders have not arrived as yet and his date of departure from here is not definitely known. Little information is available as yet on Nagasawa. According to informant, Nagasawa drinks very little, plays golf, and was out playing golf with Ohtani in the afternoon of Wednesday, 1 June.

HENRI deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT No. 6 (u)

482 3 June 1938

Memo for DIO

Subject: Japanese visitors to oil refineries.

1. Mr. A. Ogura and Mr. S. Moriya have requested the General Petroleum Corporation of California, permission to inspect their refineries in Los Angeles early next week.

HENRI deB. CLAIROBNE.

#### GOVERNMENT'S EXHIBIT No. 6, (v)

480 2 June 1938

Memo for DIO

Subject: Moriya, Sensuki and Ogura, Akira, Jr.—Return to Los Angeles of and probable date of departure of for Japan.

.4

(Testimony of Elias M. Zacharias.)

References: (a) Our (ADIO) Serial No. 215 of 11 Mch 1938. (b) Com9 card #156 of 25 May 1938, subject Ogura, A.

Enclosures: (A) Six prints and two negatives of (1) Iwakami, J., (2) Ogura, Akira and

(3) Moriya, Sensuke.

Sensuki Moriya, a chemical engineer and Akira Ogura, Jr., a mechanical engineer, both of the Ogura Oil Company of Japan, who have been inspecting various oil refineries in the East and purchasing equipment from the Sharpless Speciality Company of Philadelphia as mentioned in Reference (a), returned to Los Angeles via Chicago on 27 May. They were shown about the oil industry by Major E. H. Polkinghorne of Los Angeles, an oil purchasing agent or exporter, until Seturday evening, 29 May, when they went to San Francisco. They will be back in Los Angeles next week, Tuesday, June 7, for a week's tour of the Los Angeles refineries if the companies give them permission. They will then go to Fort San Luis where they will sail on the Ogura tanker [378] Daisan Ogura Maru.

2. J. Iwakami is the Pacific Coast manager of Asano Bussan Company.

# GOVERNMENT'S EXHIBIT No. 6 (w)

479

2 June 1938

Memo for DIO

Subject: Arrival and departure of Japanese officers.

- 1. Captain Tatsumi (first name unknown) and Lieutenant Commander Nomura (first name unknown), Imperial Japanese Navy, passed through Los Angeles for San Francisco last week.
- Colonel Yamauchi (first name unknown), aviator, Imperial Japanese Army, arrived Los Angeles 30 May, left for San Francisco, 1 June. H. deB. CLAIBORNE.

# GOVERNMENT'S EXHIBIT No. 6 (x)

477

1 June 1938 4

Subject: Arrival of Japanese officer.

1. Lieutenant Commander Ko Nagazawa or (Nagasawa) arrived this date in Los Angeles, stopping at the Olympic Hotel. He is the relief of Lieutenant Commander I. Ohtani, I. J N. [379]

# GOVERNMENT'S EXHIBIT NO. 6 (y)

472

31 May 1938

Subject: Uchida, T.—Eng. Comdr., IJN.

Reference: (a) Com9 #955 of 25 May 1938.

1. Subject individual arrived in Los Angeles 28 May and is staying at the Olympic Hotel. He is expected to depart Los Angeles for San Francisco on 29 May.

# GOVERNMENT'S EXHIBIT NO. 6 (z)

469 31 May 1938

Subject: Ohtani, Inao—Lieutenant

Commander IJN-

1. Subject individual returned to Los Angeles from the East Friday, 27 May, at 6:00 P.M. He was driving a 1937 Chevrolet Coach, license D. C. 57-512.

#### GOVERNMENT'S EXHIBIT NO. 6 (aa)

466 27 May 1938

Subject: Lieutenant Commander Inao Ohtani

1. It is reported that on his return trip from the East subject individual will be driving back a new car for some person in Los Angeles. As previously reported, he is expected back in Los Angeles during the middle part of June. [380]

#### GOVERNMENT'S EXHIBIT No. 6 (bb)

27 May 1938

465

Subject: Hideo Futami

1. Subject individual arrived in Los Angeles on 24 May on the Grand Canyon Limited and left for San Francisco at 7:45 PM on 25 May. While here he stayed at Miyako Hotel.

# GOVERNMENT'S EXHIBIT No. 6 (cc)

19 May 1938.

439

Memo for DIO

Subject: Nagai, Chieko (Dorothy).

1. Subject, who is the girl friend of Ohtani, has now moved out of the Olympic Hotel into the San Pedro Building across the street from the Olympic Hotel. Ohtani is expected in Los Angeles, from the east, about the middle of June and will depart shortly thereafter. His relief is not yet known in Los Angeles.

J. J. ROCHEFORT.

#### Mikhail Nicholas Gorin et al.

(Testimony of Elias M. Zacharias.)

GOVERNMENT'S EXHIBIT No. 6 (dd)

18 May 1938

435

294

Memo for DIO

Subject: Kono, T.—Engineer-Commander, IJN.

1. Subject individual arrived on 14 May and departed [381] for San Francisco on 17 May. While here he stayed at the Miyako Hotel.

J. J. ROCHEFORT. [382]

Government's Exhibit No. 3 as received in evidence over the objection of the defendants, as read to the jury and physically examined by them, is in words and figures as follows: [383]

#### C.OPY

George Chashi, of San Diego, is reported to have made a statement at a Jack meeting that he was not a fascist. Couple other sembers, Paul Nakadate and George Suzuki took exception to this remark and accused George Chashi of being a communist and subsequently beat him up.

Ohashi and his wife own a beaty shop in San Diego which was found burglarized one day and the places searched.

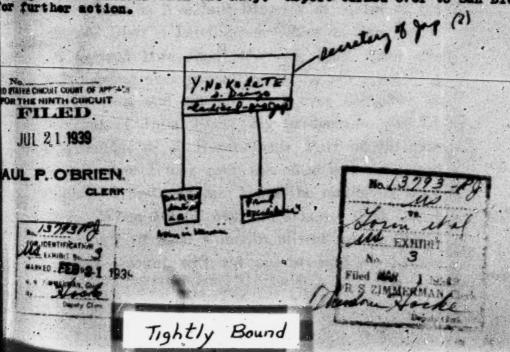
\*\*\*\*\*\*

Dr. M. M. Nakadate is dentis and is brother of Paul

Their father is Y. Nakadate who lives in San Diego and whoe is listed in our eards as "radical"- pro- Japanese". Dr. M. M. Makadate is born in 1910; is member of United States Naval Reserve in dental corps and in 1935 did some training duty on board the USS Dorsey which is a destroyer. after completion of his sea duty he was attached to aviation unit of USNR, but because of his Japanese descent, it is evident, he is not being encouraged to continue his career with USNR.

Diego, which island houses Naval aviation. He was reported as a communist.

The report, however, comes from a private watchman employed which Harris Private Patrol. This watchman holds a dishonorable ischarge from the Navy and it is believed that he made the report ingratiate himself with the Navy. Report turned over to San Diego or further action.



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#### H. deB. CLAIBORNE.

called as a witness on behalf of the Government, being sworn, testified as follows:

#### Direct Examination

# By Mr. Harrison:

I reside in the city of Los Angeles and am a Lieutenant in the United States Navy, attached to the Eleventh Naval District, acting as Assistant Naval Intelligence Officer with offices in San Pedro, California. I was commissioned as an officer in the United States Navy in June, 1926. I entered the United States Naval Academy at Annapolis, Maryland in June, 1922, and graduated June, 1926. I have been connected with the Naval Intelligence for approximately eight years. I came to Los Angeles area in May, 1938, from sea duty aboard the U. S. S. Richmond, based at San Diego. I was placed here as Assistant Director in charge of the office of District Intelligence Officer at San Pedro.

I arrived here about May 15, 1938, spent two weeks going over the duties of the office with my predecessor, and officially took over the office on the first of June, 1938. My predecessor was Lt. Commander J. J. Roachefort. Part of the personnel when I took over the office was defendant Salich. I first met him about the middle of May, 1938. When I took over the office I paid Salich the salary of \$250 a month, direct salary, \$83.33 expense account, with the proviso that any special

(Testimony of H. deB. Claiborne.)
presents or parties to be given would be taken care
of by the office. He was paid by my check, cash
checks.

I had a conversation with Mr. Salich relative to the manner in which he would be paid, which occurred approximately the 30th of June when I drew his first check. I am fairly certain Mr. Stanley was present.

Q. What was said relative to the method of payment at [384] that time?

To which question defendant Gorin objected, which objection was sustained.

The defendant Salich also objected upon the ground that it does not prove or disprove any allegation in the indictment. Objection overruled. Exception allowed.

· In overruling the objection the Court further stated:

The Court: Yes. The Court desires to explain to counsel the basis of the ruling.

The question is apparently a follow-up of the question asked of the previous witness. It goes as to whether or no this defendant had knowledge of the confidential nature of certain things, sufficient so that, as a reasonable man, he should have anticipated the normal result of his acts. It is wholly upon that theory that this testimony is being admitted, to show one of the elements of intent.

The Witness: I do not recall the exact words,

(Testimony of H. deB. Claiborne.)
but, in substance, I stated that the object of this
was not to connect the investigators directly with
the office or with my name. [385]

(Witness continues) The funds I paid him with were received from Commander Zacharias in San Diego. There was a file in the San Pedro office designated as the personal file of Salich, which I saw and examined. This was sometime between the middle of May and the first of June when I went through most of the personal files in the office, amongst these was a personal file of Salich and I read this file. Thereafter I never saw that file again. I began a search for that file toward the end of October, 1938, and searched all places in which I thought it was possible for this file to be misplaced in the office. About the middle of December, 1938, I ordered a further search to be made by my office force for not only the file but for the possibility that the contents of that file could have been shifted to another file. It was at the beginning of February, 1939, that this thorough search was completed, and no trace of the file or its contents were found.

I was present at a conversation where the defendant Salich was also present, and where the confidential nature of the work was mentioned. That was at the meetings of the group held at San Pedro, and I recall a particular meeting some time in the summer of 1938. There were present Commander (Testimony of H. deB. Claiborne.)

Zacharias, Mr. Stanley, Mr. Salich and several United States Naval Reserve Officers.

Q. Now what did you, if anything, say at that time relative to the confidential nature of the work?

Mr. Harrison: I think it would be proper to limit this to the defendant Salich, if the Court please.

The Court: Gentlemen, you are to ignore any part of this conversation so far as it affects the defendants Gorin. You are instructed to ignore it.

Mr. Stone: May the record show the usual objection with regard to these comments in regard to the confidential nature of the work, your Honor?

[386]

The Court: Yes, and the objection is overruled and an exception allowed.

Mr. Stone: I don't like to keep objecting to this, if the Court please, and if it may be understood when this testimony comes up in the future, as it has in the past, it may be received subject to the objection, and an exception? Is that agreeable to the

#### Court?

The Court: That is your privilege and your obligation.

In a case as complicated as this is, with three defendants and three counsel, I prefer to have the objections made. You may make them very succinctly and the Court will rule on each objection.

A. I particularly recall reading several paragraphs from a book called "The Reserve Officers

(Testimony of H. deB. Claiborne.)

Manual." One of these paragraphs warned any officer from writing or publishing anything concerning the Navy without first submitting it to the Navy Department.

At the end of this paragraph was a reference to the United States Navy Regulations, paragraph 113. That reference was read, but the paragraph of the United States Navy Regulations itself was not read.

- Q. Was anything else said about the confidential nature of the work by you at that time when Salich was present?
- A. After that paragraph from the Reserve Officers Manual was read, Commander Zacharias took up the point of the confidential nature of the work.
- Q. And that is what was covered by his testimony in this case?
  - A. That is correct.
- Q. Is that the only occasion where you were present in which there was any discussion concerning the confidential nature of the work of the Naval Intelligence at which Salich was present?
  - A. No. [387]
  - Q. When did such an occurrence-
- A. (Interrupting) At practically every meeting of the Intelligence group some mention was made of the confidential nature of the work.

(Witness continues) The specific duties of the defendant Salich had been given to him before I

(Testimony of H. deB. Claiborne.) took over the office. I gave him specific instructions in connection with each case to be investigated. And, further, in the office occasionally discussions would arise as to information to be collected and also at one or two of the meetings of the Intelligence group I specifically requested anyone coming upon information concerning Naval Intelligence to turn that information in to me. I specifically stressed that it would not be necessary for me to give assignments to each man but that if they ran across anything, that they were to be sure to let me have it. I remember telling both Mr. Salich and Mr. Stanley when they were present in my office some time in the late summer or early fall that the information in a particular instance was insufficient and that I desired to get together more information if possible. A discussion arose, as I remember, as to, you might say, the means of obtaining this information. And I further recall that I mentioned in general the information that I wanted in this particular case.

Q. Lieutenant, just before the adjournment, I had asked you some questions relative to any specific instructions that you had given Salich relative to his work, and would ask you at this time if you recall any instructions that you gave him as to any particular information that you asked him to obtain, or any particular matter you asked him to investigate.

(Testimony of H. deB. Claiborne.)

The Court: Do I understand that this is being offered as against the defendants Gorin, or only as against the defendant Salich? [388]

Mr. Harrison: Only as to the defendant Salich, if the Court please.

The Court: The jury is instructed to disregard this conversation that is about to be revealed, insofar as it concerns the Gorins, as it is not being introduced as applicable to the Gorins.

Mr. Pacht: May I object to it further, if the Court please, upon this ground: that notwithstanding the statement of the District Attorney, that it is not being introduced as against the defeendants Gorin, the fact that it is being testified to by the witness in itself, the evidence is being heard by the jury, and that it is impossible for the jury to eliminate from their minds something that they have actually heard.

The Court: The objection is overruled.

Mr. Pacht: Exception.

The Court: Yes.

Mr. Stone: May the record show an objection on the part of the defendant Hafis Salich to the materiality of this testimony?

The Court: Yes.

Mr. Stone: Exception.

The Court: The objection will be overruled, and an exception allowed.

A. In this specific case which I recalled, as I stated, I could not recall the exact case in question,

(Testimony of H. deB. Claiborne.)

but it was concerning either espionage, that is, probable espionage, possible sabotage, or probable subversive activities, and the investigators were informed that more information was needed in this particular case.

Q. What was said as to whether or not they were to bring the information to you for evaluation, or whether they were to be the judges of whether it should be reported to you?

A. In no case were the investigators ever told to evaluate information themselves. [389]

The instructions given them from time to time was definitely that all information was to be brought to the office.

(Witness continues) The information contained in Government's Exhibit No. 6 (b), being Report No. 560, was not furnished me by Mr. Salich.

Mr. Harrison: If the Court will permit, in order that I may comply as gracefully as possible with the Court's ruling, may I ask for instructions from the Court?

The Court: You may.

Mr. Harrison: I would like to ascertain at this time if the Court will permit me to examine this witness relative to the individuals that are involved in the reports and their connection with the United States Navy, and wherein it depicts the national defense.

The Court: That is a very broad question and one which, I think, should be presented, and the

(Testimony of H. deB. Claiborne.) application to each of the defendants thoroughly

understood, and one which, I think, should be presented outside of the hearing of the jury. If counsel have no objection, we will simply excuse the

jury and go into chambers.

Mr. Pacht: I wish to make an assignment of misconduct, prejudicial misconduct, based upon the statement of the District Attorney as to what he wanted instructions on from the Court, and the inference arising from his statement that anything in these reports affects the national defense.

The Court: Gentlemen of the jury, you are instructed to disregard the statement of the District Attorney. As I have heretofore indicated to you, statements of counsel in the case are no part of the evidence, and you are not to consider them. You are not to consider any evidence which has been offered and rejected or any implications from that offer, or to gather any inference, or to take any inference from it; nor are you to consider any evidence which has [390] been introduced and has been stricken. You will be fully instructed in that regard, and in all of those regards, at a later time before you retire to deliberate. I feel sure that no element of prejudice has arisen by virtue of request for instructions of the Court, and the motion will be denied.

(Witness continues) I do not recall any occasion when Salich reported to me that he had contacted Gorin, nor do I recall that he ever made any report to me that he had obtained any infor(Testimony of H. deB. Claiborne.)

mation from Gorin. Where my name appears at the bottom of those exhibits, it indicates that the report was made up by me. The report represents a compilation of the results of other investigations that have been turned in to me.

Whereupon the witness was temporarily excused from the stand and the witness

#### ELIAS M. ZACHARIAS

was recalled and further testified as follows:

#### Recross Examination

By Mr. Pacht:

Q. Commander Zacharias, who determines whether or not information gathered by investigators operating out of the office of the Naval Intelligence is confidential?

A. The first officer of the Navy through whose hands that passes.

- Q. In this case that would have been either Lieutenant Roachefort or Lieutenant Claiborne, is that right?

  A. That is right.
- Q. Is it a fact, or is it not a fact that the person who gathers the information, such as, for instance, Mr. Salich or Mr. Stanley, determines whether or not it is confidential?
  - A. He does not.
- Q. The designation of the material as confidential by Lieutenant Claiborne or Lieutenant Roachefort is not final, is it? [391]

- A. It is not.
- Q. You, as the Commanding Officer, reserve to yourself and to your unlimited discretion as to whether or not the information is confidential, is that right?
- A. The answer is affirmative until it passes beyond me.
- Q. Commander Zacharias, perhaps you can assist us in this matter: what is the correct name and designation of this office in which Mr. Salich worked?
  - A. (Pause)
- Q. In other words, what is the correct name of the Service which gathered this information?
- A. It is a branch office of the District Intelligence Office.
- Q. Is it not designated in the Navy regulations as Office of Navy Intelligence?
  - A. It is not.
- Q. Is it under the command of the Director of Naval Intelligence?
- A. There is a dual control over the District Intelligence Officers and their branches, one being the Commandant of the Naval District, who is responsible for the organization and maintenance of the Intelligence Service within his District, and the Director of Naval Intelligence, acting for the Chief of Naval Operations, in conducting the Intelligence Service.
  - Q. His office is in Washington?

(Testimony of Elias W. Zacharias.)

A. Washington, D. C.

The following conference was held between Court and counsel in chambers; all counsel being present as well as Commander Zacharias and Lt. Claiborne:

The Court: Show me your subpoena.

Mr. Stone: The original is in the Clerk's Office. I [392] think the copy will be sufficient.

Lieutenant Claiborne: This is the one I received.

(The document referred to was passed to the Court.)

The Court: Yes. That is addressed to Henri deB. Claiborne, court room.

You are requested to appear personally, "and bring with you all reports and files furnished to Naval Intelligence Service by Hafis Salich; all reports and files of Naval Intelligence Service concerning Mikhail Nicholas Gorin, Natasha Gorin; the activities of Russian engineers at Douglas Aircraft Co.; the activities of one Kaganovich, Commissar for Heavy Industry in Los Angeles, all information concerning Russian long-distance "flyers," and so forth, covering about all the Russian activities in America.

Mr. Stone: All those in Los Angeles, of which Hafis Salich investigated.

The Court: Lieutenant Claiborne, you are Henri deB. Claiborne who received a subpoena in this case, are you?

Lieutenant Claiborne: I am.

The Court: Are you familiar with the material which is indicated in this subpoena and which you are requested to produce in Court?

Lieutenant Claiborne: In general, I am.

The Court: Will you read it over in particular before I ask you another question.

Lieutenant Claiborne (Examining document).

All reports and files-

The Court (Interrupting): Read it over to yourself. You don't need to read it aloud.

Do you know what you are asked to bring into court? Are you familiar with that?

Lieutenant Claiborne: · I am.

The Court: You are [393]

Lieutenant Claiborne: Yes.

The Court: Now, are you the custodian—have you in your possession all of the information indicated on that subpoena?

Lieutenant Claiborne: I believe I have.

The Court: All of it?

Lieutenant Claiborne: Yes, sir.

The Court: Have you received

Mr. Harrison (Interrupting): May I interrupt there? Do I understand that you say you have physical custody of that, being in charge of the Naval Intelligence Office at San Pedro, when you say you have possession of it?

Lieutenant Claiborne: I have possession of this matter, but it is in the custody of the Secretary of

the Navy. Or, rather, the other way around. It is in my custody, but in the possession of the Secretary of the Navy.

The Court: Have you received any orders from the Secretary of the Navy?

Lieutenant Claiborne: I have.

The Court: What are they?

Lieutenant Claiborne: I have received from the Secretary of the Navy, through the Commandant of the Eleventh Naval District, my direct superior, instructions to appear without records in answer to subpoena, and when called to produce records or testimony, inform the Court that I am prohibited from testifying and disclosing contents of records under instructions of the Secretary of the Navy, Appendix Cast 15 Naval Courts and Boards, Article 113, Navy Regulations, as disclosure would be detrimental to public interest. I am directed that in the event the Court should overrule claim of privilege, I shall refuse to testify concerning or disclose any information from such records, in such event communicate promptly with Navy Department. [394]

The Court: Have you also received a request from the Government to produce documents in connection with this case?

Lieutenant Claiborne: I have received a verbal request from the United States Attorney.

The Court: And have you refused to produce the records?

Lieutenant Claiborne: Other than the records which Salich picked out in the Federal Bureau of Investigation I have refused such request.

The Court: Those that are in court now under the numbers of Exhibits 5 and 6?

Lieutenant Claiborne: Yes.

Mr. Harrison: May I ask a question?

The Court: Yes.

Mr. Harrison: Did not my office request to produce additional documents and records for the United States in this trial?

Lieutenant Claiborne: Your office did.

The Court: And those documents were parts that the Secretary of the Navy instructed you not to deliver to us?

Lieutenant Claiborné: Those documents are part of the records in my office.

The Court: The ruling of the Court will be to decline to compel the production of the instruments in the event that the man subpoenaed, Lieutenant Henri deB. Claiborne, U. S. N., refuses, on instructions from the Navy, and his superior officers, to produce.

An exception will be allowed as to the defendant Salich.

**等原种的** 

#### H. deB. CLAIBORNE,

a witness for the Government, resumed the stand and testified as follows:

#### Cross Examination

By Mr. Stone:

I am acquainted with a certain file in the United States Naval Intelligence Service Office down in San Pedro dated June 15th [395] and dealing with the activities of the Russian engineers at Douglas Aircraft. I believe Mr. Salich turned that report in to me. To the best of my recollection he did not, either during the time he was working on that matter, or at the time he turned in the report, inform me that he had received that information from either Mr. or Mrs. Gorin. I do not believe that it would be possible that I had forgotten it. The only person that I can recollect ever having seen files in my office, other than the Naval Intelligence Service, were agents of the Federal Bareau of Investigation when they were on a case directly concerned with my office. There was one occasion prior to the 10th day of October, 1938. I might qualify my answer further by saying that would include the Military Intelligence Department. Other than members of the Naval Intelligence Service, the Military Intelligence Service, and the Federal Bureau of Investigation, I cannot recollect anyone else who has been permitted to see those files.

#### H. L. STANLEY,

a witness on behalf of the Government, recalled and duly sworn, testified as follows:

#### Cross Examination

By Mr. Pacht:

When I testified that Salich and I drove to Gorin's house, following the time in July of 1937 when the Russian flyers flew from Russia to Oakland non-stop and he asked me if I would like to see the Russian flyers, we drove to a house at 451 South Ardmore. It might be 461 South Ardmore. It was on the west side of the street between Fourth and Fifth, and was an odd number.

#### Cross Examination

By Mr. Stone:

I first knew that Salich was under suspicion by his superior officers in connection with his contact with Gorin in February or March of 1938. It was several days previous to the conversation to [396] which I testified between myself. Commander Roachefort and Mr. Salich. I first became acquainted with the fact that the investigation was under way which led to Mr. Salich's arrest December 10th, about the third Friday in November. It was in November of 1938 that Lt. Claiborne showed me the paper which has been introduced in evidence as Government's Exhibit No. 3. I remember a number of conversations in which Mr. Gorin's name was mentioned by Salich and I know

(Testimony of H. L. Stanley.)

that sometimes Salich would call Gorin on the phone in my presence. On numerous occasions I urged Salich to take me to meet Mr. Gorin. On other occasions Salich told me that he would like to make a trip to Russia in 1940 and I said "Why don't you contact Gorin and see if he will give you a trip, that may make it more reasonable for you to travel that way." At the time Salich and Gorin called each other on the telephone no comment was made nor was comment made thereafter as to what was said in those conversations. Sometimes Salich would call Gorin from his apartment at nine or ten in the morning and I have listened to conversations in there at two in the afternoon. These occurred I would say between March and about May 15th, 1938. I do not remember any after that time.

versation with Mr. Salich before coming to court. On the night of December 12th, I believe Mr. Hanson called me and asked me to come to the F. B. I. office. It was about ten o'clock at night. I went there and met Mr. Salich, and he told me that he had made a statement to Mr. Dierst or Mr. Hanson, I don't recall which. He told me what the statement was about, but he didn't tell me what was in it. Neither did Mr. Dierst nor Mr. Hanson told me what was in it. I never read the statement prior to my testimony in this case. I fix the fact

of my conversation with Mr. Salich concerning his dinner with Gorin at Perino's with his telling me what a nice place it was, they served nice food. This took place the latter part of February or the first [397] part of March. He did not say the Turf Club. There may have been conversation at Mr. Salich's apartment on which Mr. Salich, Miss Olga Bryson and I were present at which the name of Perino's restaurant was mentioned. I don't recall it. I don't recall the comment being made that Mr. Salich had taken a blonde to Perino's for lunch, and that I said "Never mind, Olga. If your boy friend won't take you there, I will." I have heard Mr. Salich refer to Mr. Aliavdin.

The Court: Mr. Stanley you answered a question by counsel about getting a passage or a ticket to Russia from Mr. Gorin. What did you mean by that? Did you mean that he was to get a free trip?

The Witness: No, sir.

The Court: Pardon me?

The Witness: No, sir. He runs the Intourist Bureau, so I had been told by Mr. Salich-

The Court (interrupting): You mean Mr. Gorin? The Witness: Mr. Gorin runs the Intourist Bureau, and I thought that Mr. Salich may save some money and get the ticket at a discount through his friendship with Mr. Gorin. That is what I talked to Mr. Salich about.

Whereupon it was stipulated that on the day Mr. Dierst referred to when he testified as to certain. 0

telephone conversations when Mr. Gorin called Washington that the Russian Ambassador was not in the United States, and that the Charge d'Affaires, Mr. Oumansky, was in charge of the embassy at Washington.

#### WILLIAM S. MAXWELL,

a witness on behalf of the Government, was recalled and testified further as follows:

#### Cross Examination

By Mr. Pacht:

On the occasion when I met defendant Gorin in front of [398] the Chapman Building, after I met him I went upstairs with him to the office of Intourist. Upon that occasion I carried on my conversation with him in English. I was born in Dubua Volunskaya Gubernya. It is close to Warsaw where I was born. I left there the early part of 1914. I was born in 1900 and was fourteen years old when I left Russia. The last time I left Russia was the latter part of 1919. When I enlisted in the Navy I was stationed on the U.S. S. Brooklyn and was stationed in Russia, and I was on that ship all of that time. I was interpreter for Admiral Knight, who was Commander-in-chief of the Asiatic Fleet. I had what you might call a free gangway. The language which was spoken in this little town near Warsaw was not principally Polish; it was

(Testimony of William S. Maxwell.)
Russian. They spoke Polish, yes, and German. The official language was Russian. On the occasion of my talking to Mr. Gorin at this meeting on January 3, 1939, I talked to him in English. He started the conversation in English and I had no reason to change it and continued the conversation in English.

The Government rested its case.

The defendant Natasha Gorin then made a motion for the Court to direct and instruct the jury to bring in a verdict of acquittal in her favor upon each and all of the counts of the indictment, upon grounds stated in support of said motion. Said motion was granted as to the first count and the second count of said indictment, and was denied as to the third count of the indictment.

Whereupon the defendant Gorin moved said Court for a directed verdict in his favor upon each and all of the counts of the indictment, said motion and the grounds therefor being in words and figures as follows:

### (MOTION OF DEFENDANT MIKHAIL NICH-OLAS GORIN FOR DIRECTED VER-DICT)

The defendant Mikhail Nicholas Gorin moves the Court to direct and instruct a verdict of acquittal in his favor upon each [399] and all counts of the indictment, upon the following grounds:

#### First Count

As to the first count of said indictment, said defendant alleges and states as to his grounds for said directed verdict of acquittal:

- 1. That the first count of said indictment fails to state facts sufficient to constitute a penal offense against the defendant Mikhail Nicholas Gorin.
- 2. That the evidence introduced on behalf of the Government on the first count of said indictment is insufficient to support and sustain the conviction of said defendant Mikhail Nicholas Gorin.
- 3. That the evidence fails to disclose that the defendant Mikhail Nicholas Gorin copied or took or made or obtained any of the reports referred to or described in said first count of the indictment, or any report or writing pertaining to or concerning various and numerous individuals under suspicion or observance or surveillance or investigation, either as belonging to or contained in the United States Naval Intelligence files and reports of San Pedro, California.
- 4. That the evidence fails to show the doing of any act whatever on the part of the defendant Mikhail Nicholas Gorin, as alleged in the first count of said indictment, for the purpose of obtaining information respecting the national defense, either as described in said first count of the indictment or otherwise.
- 5. The evidence fails to disclose that the defendant Mikhail Nicholas Gorin ever did any act with

the intent or reason to believe that thereby information respecting the national defense could be obtained and used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics.

6. That the evidence fails to disclose and prove that any of the reports in said first count referred to and described, constituted, or was connected with, or in any wise related to, the national defense of the United States. [400]

#### Second Count

As to the second count of said indictment, said defendant alleges and states as his grounds for said directed verdict of acquittal:

- 1. That the said second count of said indictment fails to state facts sufficient to constitute a penal offense against the defendant Mikhail Nicholas Gorin.
- 2. That the evidence introduced on behalf of the Government in the second count is insufficient to support and sustain the conviction of said defendant Mikhail Nicholas Gorin.
- 3. That the evidence fails to disclose that the defendant Mikhail Nicholas Gorin communicated or delivered or transmitted to a representative, officer, agent, employee, subject or citizen of the Union of Soviet Socialist Republics, any document, writing, note, instrument or information relating to the national defense or any of the confidential

reports of the investigators of the United States Naval Intelligence located in the office of the United States Naval Intelligence, at San Pedro, California, or any of the reports referred to or described in the second count of the indictment.

4. That the evidence fails to disclose or prove the doing of any act whatsoever on the part of the defendant Mikhail Nicholas Gorin as alleged in the second count of said indictment, for the purpose of communicating, delivering, or transmitting to any representative, officer, agent, employee, subject or citizen of the Union of Soviet Socialist Republics, or to any person, any information whatsoever or any writing, note or instrument relating to the national defense.

#### Third Count

As to the third count of said indictment, said defendant alleges and states as his grounds for said directed verdict of acquittal:

- 1. That the third count of said indictment fails to state [401] facts sufficient to constitute a penal offense against the defendant Mikhail Nicholas Gorin.
- 2. That the evidence introduced on behalf of the Government on the third count of said indictment is insufficient to support and sustain the conviction of said defendant Mikhail Nicholas Gorin.
- 3. That the evidence fails to show or disclose that the defendant Mikhail Nicholas Gorin con-

spired, combined or confederated or agreed with the other defendants named in said indictments, or any other persons, to permit an offense against the United States of America, as in said third count of said indictment alleged.

- That the evidence fails to disclose or show that the said defendant Mikhail Nicholas Gorin conspired, combined, confederated or agreed with the other defendants in said third count of the indictment named, or with any other persons, to communicate, deliver, transmit or attempt to communicate, deliver, or transmit to the Union of Soviet Socialist Republics, or to a representative, officer, agent, employee, subject or citizen thereof, or any other person, any document, writing, plan, note, instrument or information relating to the national defense, either as described in said third count of the indictment or otherwise, with intent or reason to believe that it was to be used to the injury of the United States or to the advantage of said Union of Soviet Socialist Republics.
- 5. That the evidence fails to disclose or show the doing or commission of any overt act charged, related or set up in said third count of the indictment, or any act whatsoever for the purpose or to the end of communicating, delivering, transmitting of attempting to communicate, deliver or transmit to the Union of Soviet Socialist Republics, or to any representative, officer, employee, subject or citizen thereof, any document, writing, plan, note,

instrument, or information relating to the national defense.

- 6. That the evidence fails to disclose or show that the [402] defendant, Mikhail Nicholas Gorin ever did any act of any kind in furtherance of any conspiracy, combination, confederation or agreement with the other defendants in said action, or with any other person, to commit an offense against the United States of America, as in said third count of said indictment alleged.
- 7. That the evidence fails to disclose or show that the defendant Mikhail Nicholas Gorin ever did any act whatsoever with the intent or reason to believe that the information relating to the national defense, either as contained in said reports in said third count of the indictment described or otherwise, was to be used to the injury of the United States or to the advantage of the Union of Societ Socialist Republics.

Said motion of the defendant Mikhail Nicholas Gorin to direct a verdict of acquittal was argued to the Court and said motion was denied. Exception allowed.

Whereupon the defendant Salich made a motion for a directed verdict, which motion was in words and figures as follows:

#### (MOTION FOR DIRECTED VERDICT)

The defendant Hafis Salich respectfully moves this Honorable Court to direct a verdict of acquittal in favor of the defendant Hafis Salich upon each and every count of the indictment, and upon the following grounds and each of them:

#### First Count

- (1) The first count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.
- (2) The evidence introduced on behalf of the Government on the first count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.
- (2) The evidence introduced by the Government fails to [403] show that the information obtained concerns or affects the national defense.
- ant Hafis Salich obtained the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (5) The evidence fails to show that the defendant Hafis Salich obtained the said information with the purpose of obtaining information affecting the national defense.

#### Second Count

- (1) The second count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.
- (2) The evidence introduced on behalf of the Government on the second count of the indictment

is insufficient to support a conviction of the defendant Hafis Salich.

- (3) The evidence introduced by the Government fails to show that the information transmitted and communicated concerns or affects the national defense.
- (4) The evidence fails to show that the defendant Hafis Salich transmitted and communicated the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (5) The evidence fails to show that the defendant Hafis Salich transmitted and communicated the said information with the purpose of transmitting and communicating information affecting the national defense.

#### Third Count

- (1) The third count of the indictment does not state facts sufficient to constitute a penal offense against the United States by the defendant Hafis Salich. [404]
- (2) The evidence introduced on behalf of the Government is insufficient to support a conviction of the defendant Hafis Salich on the third count of the indictment.
- (3) The evidence fails to show an agreement or conspiracy between Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin to communicate or trans-

mit, one to the other, information which affects the national defense.

- (4) The evidence fails to show that the defendants Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin conspired to transmit or communicate information, one to the other, with intent or reason to believe that the said information was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (5) The overt acts alleged in the indictment are not shown by the evidence to have been committed in furtherance of the alleged conspiracy.

Said motion was by the Court overruled. Exception allowed.

Mr. Stone, attorney for the defendant Salich, then made a statement on behalf of said defendant of what the evidence to be offered in his behalf would show.

### VELMA I. SALICH,

called as a witness on behalf of the defendant Salich, being sworn, testified as follows:

#### Direct Examination

By Mr. Stone:

I am the wife of defendant Salich, having married him May 7 1932, in Reno, Nevada. We lived in Berkeley from that time up to 1936. I remember the 15th day of August, 1936, which was the day Mr. Salich started his vacation—his last day

(Testimony of Velma I. Salich.)

in the service of the Berkeley Police Department. On the 16th of August we came to Los Angeles where we stayed overnight. On Monday morning we went to San Diego where we registered and Mr. Salich left me. He said he had appointment with Commander Davis in San Diego, and [405] he left me at two o'clock in the afternoon. We stayed in San Diego until Wednesday morning, which was August 19th., When Mr. Salich and I left San Diego together, we went directly to San Pedro, to the Customs Building. Commander Davis was not with us. I did not see him at any time that day. I have never met him. Mr. Salich and I are separated since January 8, 1938. We made an oral agreement at that time that he was to pay me \$125 a month; \$95 actual cash, and \$30 a month payment en my automobile. Out of that \$95 Mr. Salich was to pay my gasoline bill and the balance was to be paid on the first and the fifteenth, divided. We had an arrangement that these payments were to continue until the first of the year. A short time after that it was extended to the first of February, 1938, inclusive. Thereafter we had a written property settlement agreement. The document you show me is the property agreement between Mr. Salich and myself, and was executed November 28, 1938. At that time I received \$250 in currency, and \$250 in a check.

Thereupon the document referred to was marked "Defendant Salich's Exhibit A for identification."

#### vs. United States of America

#### Cross Examination

By Mr. Harrison:

The \$250 in currency was in five \$50 bills which I received from Mr. Salich indirectly, they were handled through my attorney.

#### OLGA LOUISE BRYSON,

called as a witness on behalf of the defendant Salich, being sworn, testified as follows:

#### Direct Examination

By Mr. Stone:

I am acquainted with the defendant Salich. I recall an occasion in his apartment when he and Mr. Stanley were present, when there was a conversation concerning a certain luncheon Mr. Salich had with Mr. Gorin. That was the latter part of September, 1938. [406] We had been laughing about this luncheon engagement at Perino's because Mr. Salich was—well, it was quite a nice place, and I was put out because I didn't go. I asked Mr. Stanley—or I asked Mr. Salich if it would be possible for me to meet Mr. Gorin so I could go some time on one of these days.

Mr. Stanley said that they wouldn't take me because there was probably some blonde along, but for me not to worry, that he would take me out some day.

(Testimony of Olga Louise Bryson.)

Cross Examination

By Mr. Neukom:

I first met Mr. Salich the latter part of January; 1938. A friend of ours by the name of Jim, I don't remember his last name, introduced him to me in a cocktail bar in Glendale. After that, on several occasions, I had been to his apartment. I knew that he-was married, and continued to go with him from time to time, and have frequently gone out to dinner with him. I have had a very close association with him, and have been in court practically every day of the trial.

I have never been with Mr. Salich when he talked with Mr. Gorin. I never discussed Mr. Gorin with him. I knew of this luncheon engagement and at one time Mr. Salich, I believe, had cocktails with Mr. Gorin. We often laughed about whether I would like Russia and whether we would take a trip there some time in our lives. We were not planning such a thing. Whenever we had such a conversation Mr. Gorin's name was not always brought into it. Mr. Salich didn't want to return to Russia. He might have wanted to visit there a time, as anybody would want to visit the place of their birth, but he didn't want to live there.

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# Vol. II

## TRANSCRIPT OF RECORD

# Supreme Court of the United States OCTOBER TERM. 1940

No. 87

MIKHAIL NICHOLAS GORIN, PETITIONER,

v3.

THE UNITED STATES OF AMERICA

No. 88

HAFIS SALICH, PETITIONER,

178.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIBCUIT COURT OF APPRALS FOR THE KINTH CIRCUIT

PETITION FOR CERTIONARI FILED MAY 21, 1946.

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## Nos 9135, 9136

## United States

# Circuit Court of Appeals

For the Rinth Circuit.

No. 9135

MIKHAIL NICHOLAS GORIN,

Appellant,

VS.

THE UNITED STATES OF AMERICA,

Appellee,

No. 9136

HAFIS SALICH,

Appellant,

VS.

THE UNITED STATES OF AMERICA,
Appellee.

# Transcript of Record

In Two Volumes

#### **VOLUME II**

Pages 329 to 706

Upon Appeals from the District Court of the United States for the Southern District of California, Central Division.

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## vs. United States of America

#### HAFIS SALICH,

called as a witness on his own behalf, being sworn, testified as [407] follows:

#### Direct Examination

By Mr. Stone:

I was born in Moscow, Russia, May 24, 1905. My parents were of middle-class merchant guild, having a store, and my father was commonly known here as a middle-ciass business man. I went to school, to the Moscow Imperial Academy in Moscow. Russia. We lived in Moscow proper, up to about 1917, when we moved to the city of Kazen. That is about seven or eight hundred miles due east from Moscow on the banks of the river Volga. That was before the October revolution, after the February revolution, however. I lived there until some time the latter part of the fall of 1918. My parents left me and went to Siberia with the Czechoslovakian white forces which were then on the retreat from the central part of Russia, and they left me in the care of my grandmother. I did not have any association with the government of. Russia at that time, I was a small boy. I rejoined my parents when they returned in 1920. From the time they came back I was with them right on up to the time we came here to this country together. They rejoined me in the city of Kazen where we remained about two or three months, maybe. Kazen at that time was in the control of the Red forces. We left Kazen in the Spring of 1920 and went

across Siberia to Manchuria. We were unable to take any of our property with us. We left relatives behind in Russia, my uncles, aunts and numerous second aunts and second cousins and second uncles. We lived in Harbin, Russia, and left there the latter part of 1921 or the early part of 1922, and went to Japan where we lived at Yokohama. We lived there until after the big earthquake of September, 1923, when we came to this country. My father is employed in a downtown building in San Francisco as a night janitor. I joined the Berkeley Police Department July 1, 1930, and served as an active officer until August 15, 1936, my total service being a little over six years. I lived [408] in Berkeley at the time. While living there I became acquainted with a man by the name of Aliavdin. I met him through a personal friend of mine who had met him through his official capacity while he was employed in Honolulu. Aliavdin was Vice Consul for the U.S.S.R. in San Francisco at the time I met him. I met him in the fall of 1935. He was in San Francisco several times, two or three times that I saw him up there in 1935 and in 1936. But to the best of my knowledge he had both San Francisco and Los Angeles within his jurisdiction. Therefore, his duties were divided, I believe, between these two cities. I applied for a place with the United States Naval Intelligence Service about three or four months, I believe, be-

fore I received notice of acceptance from Undersheriff Brearton of San Diego County. My first application was made, I suppose, around April or May of 1936. I discussed that application with Aliavdin at a luncheon that I had with him at his invitation at which just he and myself were present. This was either the latter part of 1935 or early part of 1936. I would say it was in the spring of 1936. We were discussing opportunities in the police department. In connection with that discussion I mentioned to him that it was entirely possible I might not be with the Berkeley police department any longer, that I had recently made an application for service with Naval Intelligence in Southern California, and that I might get that position as a result of my application. I believe my application was accepted some time either in July or August. My last day of active service with the Berkeley Police Department was on August 15, to the best of my recollection. We left Berkeley August 16, I believe, and with intermediate stops went down to San Diego where I interviewed Commander Davis. I reported for duty on Wednesday afternoon, shortly after one o'clock, August 19th, 1936. I did not see Commander Davis at all on the day I reported in San Pedro. He did not come up from San Diego with me and did not appear in San Pedro at all to my knowledge. I saw Aliavdin after I joined the [409] Naval Intelligence Service.

The first time I saw him in Los Angeles was I beheve, at some hotel; I think that he told me he came down to Los Angeles for the specific purpose of opening up the vice-consulate for the U.S.S.R. I was directed by higher superiors to secure information concerning one Levanevsky, a Russian flyer, the directions being given by Lt. Commander Roachefort. I told him that through Mr. Aliavdin I met the flyer Levanevsky and his group; whereupon Mr. Reachefort asked that if I could see or hear anything of import, to let him know. I did. furnish the office a report of my observation while I was with that group. I secured the information from Mr. Aliavdin, and through my association, brief as it was, with that group. I am not sure whether Mr. Aliavdin was vice consul in this city but either he was that at the time or acted in that capacity representing the interests of the citizens of the U.S.S.R. Mr. Stanley was not connected with the Naval Intelligence Service during that period. I went with Mr. Stanley to a house at 451 South Ardmore to see the Russian flyers, and remember his testimony in that regard. The publicity given the Russian flyers after their arrival in Los Angeles created a desire in my mind, as well as in the minds of other people, I imagine, the desire to see them. I then asked Mr. Stanley whether or not he, too, desired to see them. Upon his agreement, we went up to the address given, rang the

doorbell, and a gentleman by the name of Yudin answered the bell and stated in Russian that because of the fact the flyers were extremely tired, it was impossible to see them.

Whereupon it was stipulated that some Russian

flyers arrived here in July of 1937.

(Witness continues) I met Mr. Gorin but briefly about the time of that incident or after; if Icam able to correct myself, I believe I met Mr. Gorin after because at that time I didn't know Mr. Gorin lived there. I turned into the office of the Naval [410] Intelligence Service the information secured by me in regard to these two groups of Russian flyers. Yudin was either an office manager or acted as vice consul for the U.S. S. R. in Los Angeles at that time. I met Mr. Gorin in the summer of 1937 after this first incident that we mentioned. The circumstances under which I met him were that Lt. Commander Roachefort instructed me to contact someone in the Soviet Consulate to determine as to what the activities of a certain Soviet official named Kaganovich were in Los Angeles. In response to that instruction I called at 451 South Ardmore and eventually contacted Mr. Gorin. Ita was either in July or August of 1937 or thereabouts. I had never met Mr. Gorin before that time. No one else except myself and Mr. Gorin was present and the conversation was of a social character and touched general topics as well as the

(Testimony of Hafis Salich.) activities of the man Kaganovich. I made a report of that information to our office. I next met Gorin rather late in the fall of 1937. This meeting was occasioned by information through my wife that a Mr. Gorin had called and had a letter for me. Is called on him either the following day or a day or two afterwards at 451 South Ardmore. I did not see anyone outside of Mr. Gorin there; Mr. Stanley was there and his friend from Porto Rico. I didn't go inside the house. I rang the doorbell and Mr. Gorin came out and after a short conversation, we joined Mr. Stanley and his friend. He stated thathe was busy just then; that he had a letter for me from Mr. Aliavdin and that he would like to see me at some later occasion.

With reference to the testimony of Roy Hanna, I absolutely did not at any time open the safe or look in the safe in the office or investigate any papers found in that safe. My duties were many and varied. We were to go out and get the information, any kind of information, in which the Commander was interested. At that time it was mostly Japanese, although we were interested in representatives of other nations as well. [411]

#### By Mr. Stone:

Q. Were you requested to obtain specific information that was outlined to you with each assignment or were you given a general roving assignment?

A. Both, the office would receive an assignment this is hearsay so far as I am concernedeither from San Diego or Washington, and the Commanding Officer then would turn that assignment over to the investigators instructing them to comply with the assignment. The instructions also were that the assignment was to be carried through in the best manner possible and to the best of the investigator's judgment. Besides that, the investigators were also to be on the lookout for any information which might come to their attention and which might be of possible interest to the office. The duties were mostly of investigative character,. although, at a number of occasions the investigators were also called upon to perform—should I say -private work for the Commanding Officer of the organization. I was a clerk for one month while Chief Yeoman Hanna was away. My duties were to keep up on the office work, stenographic work, typing and other incidental duties in connection with secretarial work as conducted for the Commanding Officer. I was expected to keep up generally with the work of the office and keep myself acquainted with what the office was doing. Mr. Stanley and I would come in the office and get that yellow onion skin file to which reference was had at this trial before and read over the copies of that file for the previous day or two that we had not been in the office. I don't remember any specific orders

as to that; but it was understood that we were to do that. We would do it every other day. We went into the office three times a week. There never was any occasion on a Saturday morning when Mr. Hanna entered the office to find me going through his desk.

The next time I saw Gorin after the time when Stanley and I and his Porto Rican friend went to 451 South Ardmore was a few days [412] after that. It was in the evening and Mr. Gorin and myself were present. I believe I called on him that night, and having had a few unpleasant words with Mrs. Salich, I think that I knew she might follow me so Mr. Gorin and I went to some place near that vicinity and spent some little time together. I called in him first at his house and then from there went with him to another place in the vicinity. It was a cocktail lounge. This was some time in January, because a day or two after that, Mrs. Salich and I separated; it would be either a day or two before the 8th of January. At that meeting, among other things that we talked about, Gorin also mentioned the fact that they were interested in matters pertaining to the Japanese activities and Japanese activities only. The conversation was in Russian; any word meaning interested or was curious about, would probably do. I told him that I did not think there was anything at all in my knowledge, or to which I had access that would be of any possible

(Testimony of Hafis Salich.) benefit to anyone, and that therefore P would discourage any such thought on the part of anyone, that there might be anything of value or benefit in my possession from the standpoint of information concerning the Japanese. I discussed that meeting with Mr. Stanley, the very first time I saw him. That meeting was also discussed with Lt. Com-, mander Roachefortest the office in San Pedro, Mr. Roachefort and Mr. Stanley being present. This was either the following day or the day after the conversation took place. I acquainted Mr. Roachefort with what Mr. Gorin teld me and Mr. Roachefort showed a mild interest. Now, I am not very sure whether this conversation took place at that meeting or a meeting or two afterwards. Mr. Roachefort said, to my accounting of what conversation took place between me and Mr. Gorin, "That sure, we will exchange information with him, but will give information that he can get in either newspapers or magazines, but meantime you try and see just what sort of information he has been able to get on the Japanese Consulate. See if you can jar him loose [413] from it." That is the expression that he used. I am not very sure whether Mr. Stanley was present at that conversation or not, because shortly-about that time Mr. Stanley, I believe, took a week's absence from the office. However, Lt. Commander Roachefort and myself were there, for sure. I am not sure if Mr. Stanley

was there at the time that the conversation took place where Mr. Roachefort said that, "Sure, we will exchange information," et cetera. However, Mr. Stanley was present at an occasion or two when I discussed Gorin with Mr. Roachefort. Mr. Gorin gave me a letter of introduction from Aliavdin the first-night I met him. This was a letter introducing Mr. Gorin to me, and stating that Mr. Gorin was a good personal friend of his, and that I might be able to enjoy good social contact, or words to that effect. It was purely a letter pertaining to, social correspondence more than anything else. I believe the next time I saw Mr. Gorin was either a few days or a week after that. One of the meetings took place at Perino's when Mr. Gorin and I had lunch together. No one else was present. Mr. Gorin reiterated his desire to know as to the Japanese activities, also his thought that I may be in a position to furnish that information. At this meeting, as well as at other meetings that took place between me and Gorin, at that time Lerepeated my doubt as to whether or not any of the information that I might possibly gain in connection with my duties would be of no possible value or benefit to anyone. I believe his argument was that some of this stuff might not be of any value on the whole, but there might be an item or two which might be connected with something in which they were interested. Mr. Gorin also stated that even if the (Testimony of Hafis Salich.) information seemed to be of no possible benefit to me at the time, it would still be of indirect benefit to the United States of America, because of the common ground in which the American and Russian interests met with respect to Japan. He also stated, to my assurance, that they felt I was a patriotic and loyal American [414] citizen, and that they realized that, that they praised that trait in me, and that they had nothing whatsoever against this country except a feeling of profound respect and friendship and gratitude for what this country has done for them from the standpoint of technical instructions, as well as assuming the attitude of a professor doward a student who was willing to learn new and progressive methods of industrialization. There was also mention made by him of financial assistance which I declined categorically at the time. He stated that if there were any expenses in connection with this work, or any incidentals, why, he would be glad to take care of them. I am not so sure in my mind now as to whether or not the offer on his part was made with respect to financial gain on my part, or with respect to helping with the actual expenses of the work in which he, too, might benefit to a certain extent. He said that anything pertaining to Japanese was of interest to them. I don't believe he ever mentioned anything of any specific instance, of any specific nature. He reiterated his insistence that it was only the Jap-

(Testimony of Hafis Salich.) anese they were interested in; that they were not interested in anything pertaining to this country. In fact, to be on the cautious side, I mentioned to him that after all I was a patriotic citizen, and he said that at no time would they place me in jeopardy with respect to this country, and that at no time did they want anything concerning this country, or against this country. I believed Mr. Gorin. I discussed my meetings with him at every stage of the game with either Mr. Stanley or Mr. Roachefort, or both, and discussed the luncheon meeting with Mr. Stanley the following day. In fact, Mr. Stanley knew I was going to lunch with Gorin that day. I believe this discussion was in my apartment. When I came down I telephoned the office and I told Stanley that I would not be able to have luncheon with him that day, and I believe he said, "Yes, you are having luncheon with Mr. Gorin today, aren't you?" I discussed the meeting at Perino's with Commander Roachefort, Mr. [415] Mr. Stanley also being present. This was either the following day or the day after the meeting took place. I told Mr. Rockefort that I had lunch with Mr. Gorin at Perino's, and that Mr. Gorin reiterated his desire to obtain Japanese information, and that he also reiterated his offer of financial help. After that there was some discussion in the office of the matters pertaining to other subjects. Then, as Mr. Stanley and I were leaving, as an afterthought, I asked Mr. Roachefort as to what he wanted me to do with respect to Mr.

(Testimony of Hafis Salich.) Gorin, to which Mr. Roachefort said, "Try to determine the exact proposition that he makes to you, and the next time you go up to see him take Stanley along with you." I believe Mr. Roachefort said "We will give him information which is of no value. See what he knows about the Japanese Consulate. See if we can't gar it loose from him." Within the next day or two I had a conversation with Mr. Stanley either in an automobile or my apartment. I said to Mr. Stanley that Mr. Gorin was after that information, that he wants to pay. some money for it, to which Mr. Stanley said, "Sure, I can make use of some extra money. Let's find out what he wants." We both agreed that because of the specified sum of expense money which covered the car only, that possibly some money would come in handy to cover some extra expense in connection with the work. On the day that Commander Roachefort suggested I should take Stanley up the next time I saw Mr. Gorin, in the automobile coming back from San Pedro, I said to Mr. Stanley, commenting on the remarks, that it would spoil my contact with Gorin, with which he agreed. He said that would make him suspicious and naturally spoil the contact with him altogether. The next time I discussed Mr. Gorin with Mr. Stanley was at one time, when Lieutenant Claiborne asked me to get some information about the Russian engineers at the Douglas Aircraft plant, I told Mr.

Stanley, "This assignment, your needn't worry about. I will take care of it with Mr. Gorin." And he said that he agreed to it and it was understood between us that [416] I was to take care of that particular assignment that particular evening; and I believe in the presence of Mr. Stanley I telephoned Mr. Gorin and made an appointment to see him that particular evening, which I did. Upon getting the information from him, I made the report to Lt. Claiborne the following day and informed him that the information came from Mr. Gorin. I believe I saw Gorin again some time either in March or April of 1938. I had two or three or four meetings with him either the first part of 1938 or beginning from the last part of 1937, and there was a hiatus of about a month and a half when I did not see him. There were a couple of weeks that I never saw him, that is a period of time during which I don't believe I saw him. I don't recall exactly where the meeting of March of 1938 took place. I believe we stopped some place in the western part of the city for a little conversation. No one else was present except myself and Gorin. To the best of my recollection I think we went over the former ground of conversation which we covered concerning his desire for information pertaining to the Japanese. At that time, I believe I agreed that I should furnish him with information pertaining to the Japanese. I don't recall what was said at that time, but to the best of my recollection, Mr.

Gorin was again very emphatic that his desire had nothing to do with anything against this country, and that if anything it was of benefit to this country. As I stated, he said, under no circumstances would the fact that Japanese information was given him be against this country, but that if anything it would be of benefit to this country because of the common plane on which the interests of the two countries met; namely, the possible menace from the third power, Japan. I mentioned the fact that I was separated from my wife; that I found it rather difficult for me to maintain my status of living with the handicapped financial position which I was in at the time. Also, I mentioned that offhand there was a large either \$120 or \$130 gasoline bill, which I had no way [417] of meeting. And I believe it was then that suggestion came I should accept a financial assistance to take care of partially the money which was then paid by me to Mrs. Salich. I believe it was Mr. Gorin that said it to me. I thanked him, and said that I would accept the assistance, but then I told him that I would consider that merely a loan; to which he said that it was perfectly all right if I did consider it a loan, but that they didn't wish to stand over me harping for immediate payment of the money. I then told them that as soon as I was straightened out with my financial difficulties, at that time I would resume paying him the money that he had given me. I told him that the agreement ran with my wife as

late as February 1, 1939, after which time I would have no need whatsoever for any further financial assistance, and that I intended to start repaying for the loan. I also told him that I intended to use part of the money on the Navy business; and also I asked him if at any time at all the office desired information concerning the Russian activities. would he be adverse to furnishing it. He said that he would be pleased to furnish any information that he could possibly furnish, and that the office was interested in. At that conversation, I remember I gave him one item of information, which was secured by me directly, and which was the account of a meeting of the Far East Research Institute, a Japanese second generation organization. The report dealt on the appearance at the meeting of the Far East Research Institute of an English captain, whose name escapes my mind now, but who was sponsored by either the Japanese Consul, Ota, at the time, or Herman Schwinn of the Deutscheshaus. The report also gave briefly as to what was said by the British captain of some sort or other, and I believe the report was very much anti-Semitic and somewhat anti-American as to sentiments expressed by this captain. I gave him no other information that night and he gave me none. The next time I saw him was, I believe, about three or four weeks afterward, it would be either April or May. I believe [418] that meeting took place at some restaurant on Western Avenue, no one else

being present except Gorin and myeslf. At that meeting we talked considerably and discussed the Japanese situation at large. I gave him some oral information concerning the so-called Japanese activities, but at this moment I couldn't remember what it was. Either at that meeting or the meeting following that, he gave me some information about the activities of the Russian engineers at the Douglas aircraft, and at that meeting also he gave me \$200 in cash. I thanked him for the assistance and that is about all that was said about the \$200 .-I may have given him some oral information about the subject we discussed, but also some written notes covering a part of that information which he was interested in, but I don't remember what that information was. I told him orally what I thought the Japanese Colony represented, how many people were there, what the people that lived in the Japanese Colony were engaged in from the standpoint of vacation. I believe I also discussed with him as to whether or not the Japanese in this area were really patriotic for Japan or whether or not they were lukewarm or whether or not they were pro-American. Pertaining to that particular subject, I told him that Southern California had the most number of Japanese people living here; that they were first generation and second generation Japanese, I also told him in my opinion the first Japanese were intensely patriotic to their Emperor. I also told him that I thought the second

generation of Japanese, however, could be depended on to rally for the American side in case it came to an actual point of contact, I mean conflict. The substance of what Gorin said was that they, in Russia, felt that the Japanese were almost fanatical in their worship of the Emperor and that the masses at large would be willing tools to follow the dictates of the leader, even to the extent of attacking such ostensibly friendly and democratic powers as the United States of America; and he thought that the Japanese that were born here or in Japan were all [419] pro-Japanese and that Americans were laboring under a delusion of the fact that the Japanese could be trusted on second generation or not. In substance, I told him that that was about the type of information that I could furnish, and that is about al. I believe at that meeting, and other meetings, he again repeated his assurances of friendship; also his admiration for my avowed feeling of loyalty to this country. He said that Russians held U. S. A. in great admiration; they were very grateful to us for teaching them things of which they knew very little about, such as advanced methods of technique. He said that they were very grateful for permission granted their aviation engineers to come here and study the aviation methods of engineering—that I remember particularly—and that he also said that if at any time he came into possession of some information concerning Japanese, which I considered would be worth while, that he would

turn that information over to me. In fact, either about that time or shortly thereafter he did furnish a report concerning a Eurasian, or half-European, half-Oriental girl, who was reported to have been living in Hollywood and associating with Orientals. I remember having worked on that case, and the office followed that case up with Mr. Stanley and myself working on it actively. I typed up the information concerning the engineers at the Douglas Aircraft furnished to me by Gorin and gave it to Lt. Claiborne as one of my usual reports. At the time I remember telling him that this information came from Mr. Gorin. I don't recall what sort of a reply be made. Commander Roachefort was gone by then. It was, I believe, from time to time in that period that I mentioned it to either Mr. Claiborne or Mr. Stanley something about Gorin. At any rate, I remember telling Mr. Claiborne that I knew a Russian connected with the Intourist organization. With reference to the telephone conversations referred to by Mr. Stanley in his testimony, there was a number of such telephone conversations on the telephone. I can't recall exactly as to which-I mean to what [420] each separate specific conversation consisted of-but when Stanley was present there I believe Mr. Gorin did call me up, and I told Stanley that that was Gorin; and Mr. Stanley, on another occasion was also present when I telephone Mr. Gorin myself for the purpose of making an appointment with him and finding out some in-

formation from him. That information was about the Russian engineers at Douglas Aircraft. I think Stanley was there when Gorin phoned me and made this luncheon appointment at Perino's. I talked to Mr. Stanley following this conversation with Mr. Roachefort concerning which Mr. Stanley testified. I think that we were talking about taking a trip somewhere. Mr. Stanley mentioned his round-theworld trip, but I think I told him that by 1940, when my financial affairs would be pretty well straightened out. I would like to take a trip to Russia. I believe that conversation was also occasioned by the fact that I had just received a letter from my uncle back there. And Stanley did say something about-"Well, your friend will probably fix you up with a reduced rate on the transportation." I would say that I saw Mr. Gorin about four or possibly five times between say the first of June, 1938, and the 10th day of December, 1938. I have a general recollection of all of the occasions together, except one occasion. That was when we were discussing the fact that I was keeping up my payments to my wife. He then suggested that I should make a property settlement, and that he would be glad to furnish me with \$500 which would cover the property settlement and then I wouldn't have to worry much about keeping up the payments. This occurred about a month and a half before the property settlement was effected some time in November. It took place in my car. We were

(Testimony of Hafis Salich.) riding that evening around the western part of Los Angeles and the southern part of Hollywood. No one else was present. During one of those conversations he also stated that the information that I had given thus far was found to be very inconsequential, no value by his superiors or Moscow, I believe he [421] said; and which time I also told him that that was the only kind and the best kind of information I could furnish him; that I knew at the time the stuff was valueless and that if they themselves thought the information was no good, why, it was perfectly agreeable with me that I should terminate my relationship entirely. By "They", I mean Mr. Gorin and his superiors. At a meeting or two before that, I believe Gorin and I had talked over the apparent value or worthlessness of the report. I believe that conversation took place either in June or July of 1938, in my car while we were riding around and talking. He said that either his superiors or Moscow felt the information was of no value and they believed I was in a position to get information concerning the socalled real known Japanese spies. I believe that was all that was said in that conversation. I told Mr. Gorin then that I was in no position to know as to who the real Japanese spies were; that that information; however, was the best I could give at the time. I remember specifically the meeting and talking to him about relatives in Russia. I told him that I had received a letter from my uncle where

he stated that he was temporarily out of a job. Gorin's reply was not too specific, to the best of my recollection. I believe he said that even in Russia people change employment rather to suit their ability or fancies, or words to that effect and that this was just probably a temporary situation. Another specific conversation I had with Mr. Gorin which I remember, I believe that after he gave me the \$500 the property settlement terms were also to cover a number of bills which were not covered naturally by the amount, so at that conversation I think he said he would give me an additional \$200 to cover that. This took place some time in the latter part of November, if I recall correctly, It was after the property agreement was executed. He paid me additional money, \$200. I recognize the document, which is Exhibit A, it is a property agreement between myself and Velma I. Salich, my estranged wife. The interlineation [422] which is there was written in at my request and initialed by. both Mrs. Salich and myself. At the time it was executed, I gave her \$500, \$250 was borrowed from the California Bank and the remaining \$250 was. borrowed money furnished by Gorin. He gave me the \$500 the latter part of October or the first part of November. About a month after that he gave me the last and final \$200. I received from Mr. Gorin, I believe, altogether \$1700. I told him I would pay him back. I told him that some time either in August or September. I told him that I considered

this merely a temporary loan in my present predicament, and that I intended to repay him every cent of it as soon as my domestic and financial difficulties were straightened out. To the best of my recollection I gave to Gorin information contained in Government's Exhibit No. 6 (dd), which you have shown me. At no time did I give Mr. Gorin any actual file which was contained in the Navy Intelligence files. The so-called reports given him were merely information which I remembered or either reported to Mr. Gorin orally or made note of on my portable typewriter in my apartment at home. To the best of my recollection, I disclosed the contents of Government's Exhibit 6(cc) to Gorin, also I stated the contents of Government's Exhibit 6(bb). I do not remember stating the contents of Government's Exhibit 6(aa), although I have furnished him with information concerning the particular subject individual. When I held a conversation with Mr. Dierst, December 10, and we went over together the files brought up from the San Pedro office, I am not so clear as to what occurred at that particular evening. While Mr. Dierst and I talked, why, we leafed over some of these, and I believe I told him that this would give the type of information I furnished Mr. Gorin, this might have been the type of information furnished Mr. Gorin, in that particular order. And when he did finish that report, and where I made ten written notations, the last two pages of that report, how-

ever, I did not go over with him. I had a chance to look [423] at those reports at your desk here later on, but I did not go over that page or two where there was a long list of reports where it was stated gave or did, not give. I read over the first, second, third, fourth and fifth pages of Government's Exhibit No. 4 after Mr. Dierst wrote it out. With reference to the statement "In going over the various reports of the Naval Intelligence records with Salich, he stated that he furnished information from the following reports to Gorin on their last meeting, which was the day after Thanksgiving last, or November 25, 1938," which is on the sixth page of the exhibit, I would say that as to the list of seven numbers there I did not go over with him any list of this information where the numbers of the reports alone were given. However, on the reports where some specified explanation was given, I did read that and make appropriate correction; the comment in parenthesis opposite, the number 1116 is my comment. I simply read the explanation that he put down on the report as given by me to him but paid no attention to the numbered reports which he put on the left margin. On the next page which commences "For Gorin and doing sabotage work". I read over his explanations again but did not check the numbers or the actual report itself. As to the next to the last page of the exhibit I again read the explanations which Dierst wrote. The same is true as to the last page. In the conversation with Mr. Dierst, I picked out every report which I might have furnished, I think we went over that file very carefully. I am unable to say whether we left in the file any reports which I did or might have furnished to Gorin. We went over a lot of reports, looked at a number of files, but whether or not we covered them all, I am unable to say. Of those I looked at all the reports I furnished to Gorin were picked out. I was under a mistaken idea that Mr. Dierst had personal notes which were introduced as an exhibit. It is those personal notes that I had reference to that I did not check over with him or look over at all. [424]

Whereupon it was stipulated that Mr. Dierst used two pages, which photostatic copies were in the hands of Mr. Stone, to refresh his recollection when he testified.

(Witness continues) These photostatic copies consisting of two pages are the pages to which I referred when I said I did not look at those last two pages of Mr. Dierst's notes.

I remember discussing with Gorin a man by the name of Simmons. We discussed him twice. They were a meeting apart from each other. I imagine the first time we discussed that was some time either in August or September, and he mentioned to me that there was a man named Simmons; or Simons, in San Diego, who was taking Japanese lessons from a certain Japanese doctor down there, and that his name, as I mentioned before, was

either Simmons or Simons, and he also thought that the man might bear investigation from our angle as a possible American suspect because he was studying Japanese, and I think I looked that man's name up in our files. I don't believe there was any more conversation concerning Simmons the first time his name was mentioned. At the next conversation I had with Gorin his name was mentioned again, this took place at a time when I think I made some kind of a written note concerning Simmons. I made this from the 5x8 index file which is kept alphabetically according to names in the office in San Pedro. I told Gorin that I looked that name up, but that we can't seem to have any information concerning that man Simons as a possible student of Japanese language from this Japanese doctor, but that the only Simmons there was in our files in San Diego was a Simmons and some other fellow that was in some island down there near San Diego, or in San Diego. If I can remember correctly, now I think that I told him that this information concerning Simmons and his friend came from some private watchman or private patrolman. From time to time I also asked Mr. Gorin about certain names which were reported to us as possible communists, or rather possible suspects in subversive [425] activities, and possible Soviet agents. And this information I would ask him, and he would deny those that he did not know, and those

that he knew of he would give an appropriate comment, such as a man named Shumovsky, who was in business here that was perfectly legitimate. I believe that conversation about Shumovsky took place some time either in May or April or June, because I remember having furnished that information to the office, but I am not so sure in my mind whether I furnished it to Mr. Claiborne or Mr. Roachefort. I believe I discussed the man mentioned in memorandum No. 1116, dated November 19, 1938. That conversation took place possibly around October or November, 1938. The individual mentioned in that report was considered by our organization as being very unreliable, and I suspected that he may have also contacted Gorin, offering his services, or rather, volunteering his services, for one purpose or another. I am referring to Captain Bakesy. I asked Gorin about him and he said that he knew of him, and he also knew from his knowledge of the man -I think from other people—that he was also very unreliable and that he had nothing in common with him or nothing to do with him. Referring again to the conversation in connection with Simmons and Raybe n, I told Gorin I looked Simmons name up down at the office. that I found no record of Simmons studying Japanese, and the only Simmons of or in the vicinity of San Diego is Simmons and a friend of his, I think it was, who works in North Island in San Diego. I think I also added that this

information came from some private watchman or private patrolman. I think I gave it to him in writing and I remember that at that time I asked him whether or not he knew the people as communists, and he reassured me that he had nothing in common with the communists here; that no communist considered him as a communist working here and he reiterated his expression of friendship and desire of cooperation with the U.S. A., or words to that effect. I have not seen Government's Exhibit No. 3 before, but this looks very much like one [426] of the reports that I furnished Gorin. It differs, this is not my style of typing in the first place, and in the second place, this cryptic diagram at the bottom is entirely strange to me. I know nothing whatsoever of these curves and lines drawn at the bottom of this page. The typewritten part of the report, in its phraseology and English employed thereon, looks very similar to my style of typing as well as language used in writing reports. I think that I could go as far as to say that this is one of the reports that I furnished Mr. Gorin in a written form. When I furnished it to him, there was no diagram or ink or pencil writing on it such as we see here at the bottom of Government's Exhibit No. 3. I did not give Gorin any information concerning George Ohashi, Paul Nakadate, George Suzuki, Dr. M. M. Nakadate, Y. Nakadate and Bert Simmons. I gave him what is in substance (Testimony of Hafis Salich.)
contained in Government's Exhibit No. 3 with the
exception of the ink addition at the bottom. The
last time I gave any information to Gorin was the
latter part of November, 1933, I believe.

Whereupon there was offered in evidence Report No. 1116. Defendant Gorin objected on the ground that nothing contained in it related to or was concerned with the National Defense and that it was incompetent, irrelevant and immaterial, and upon the ten grounds offered in support of his objection to the first of the reports which were offered in evidence by the Government.

Objection overruled. Exception allowed. The document referred to was received in evidence and marked

"DEFENDANT SALICH'S EXHIBIT B," and is in words and figures as follows:

18 November, 1938

Memo for D. I. O.

Subject: Bakesy, Captain Charles G.—Interview with the U. S. Secret Service Office in Los Angeles.

1. The subject, individual was met on the appointed day and it de- [427] veloped that he wanted to see the proper government authority regarding the prosecution of one Leon Lewis, whom Bakesy accused of impersonating an

"Army Major" and obtaining from him some of his subversive evidence. It seems that Leon Lewis was introduced to Bakesy once as "Major Frank Montgomery" and later, when Bakesy called on Leon Lewis on some other matter, he recognized him as "Major Montgomery."

2. Bakesy was referred to the United States Attorney's office.

H. DeB. CLAIBORNE.

(Witness continues) To the best of my knowledge, I gave Gorin Naval Intelligence Report No. 1145 concerning Count Koyoshi Kuroda, who was at that time staying at the Ambassador Hotel. To the best of my belief, I also furnished him report No. 1133, subject, the Japanese War Saving Fund, and the amount contributed to in the Los Angeles area. To the best of my memory, I also furnished Mr. Gorin report No. 1132, concerning reported invention of Futashi Cato. To the best of my memory at this time, I also furnished him report No. 1130, concerning Shijgeki Oka.

Some time during the summer of 1938 I received a letter from an uncle of mine in Russia stating that he was out of a job and I mentioned that fact to Mr. Stanley. Just he and I were present. I told him I intended to send my uncle one of my suits. I said I would like to go back there and visit him

(Testimony of Hafis Salich.) and the rest of my relatives. I don't recall that Gorin's name was mentioned in that conversation. I am a United States citizen, and acquired my citizenship in March of 1929, at San Francisco, California. That was before I became a member of the Berkeley Police Department, and I have remained a citizen at all times since. When I gave this information to Gorin I did not believe that it would be of injury to the United States. I did not believe that it might possibly be of any injury to the [428] United States. I did not believe that that information would be of advantage to the Union of Soviet Socialist Republics in any conflict with the United States. On December 11 I gave a typewritten statement to Mr. Dierst. That statement is the whole truth. You have handed that to me and I have read the whole of that statement and it is the whole truth, and after thinking the statement over there are no radical changes of any kind that I would want to make.

## Cross Examination

By Mr. Harrison:

With reference the typewritten statement I made December 11, 1938, there are one or two points there I could clarify by further explanation or an explanatory remark. Any impression that may have been derived from reading this that I had at any time at all a conscious knowledge of the fact that

information I furnished Mr. Gorin was of any possible benefit to Russia. I believe my statement here is clear enough to indicate that at no time did Ithink that Russia was benefiting anything by the information that I gave them, for if there was any benefit of any kind, it was a benefit for the advantage of the U.S.A. That is about the only thing I think of at the moment. I received \$1700 from Gorin in currency. As near as I can remember now, most of it was in \$50 denominations. According to Mr. Dierst, I told him that that money that was found in my possession was given to me by Mr. Gorin. After thinking the incident over, however, I believe that part of that money was salary, and part of it was money that was given to me by Mr. Gorin, because I believe that he gave me that money at least two or three weeks before the interview took place to which Mr. Dierst referred to. I received some money to make the property settlement with my wife about November 8th, and about November 22nd I turned over certain papers for the \$250. The first money I received from Gorin was given me some time either in March or April or May, it was in the Spring of 1938. That is the first that I can tell you. I do not [429] remember the occasion when he gave me the first money; there is no specific occasion in my mind; because there was nothing outstanding about that particular meeting which would bring the occasion to my mind. I said

there was nothing outstanding in my mind in connection with any other event that took place in that meeting except that money. I was in a car at the time driving around. The amount was \$200, and to the best of my recollection, it was in \$50 bills. The other sums of money were given or loaned to me, I should say, by Mr. Gorin at the interval of about a month and a half or two months, or two and onehalf months apart. I would say it was about two months after that I received the second \$200, and the third time I got the money was about a month and a half or two months after that. All I can remember at this moment is that from the period of time from say March of 1938 and December 10, 1938, including the last \$700 which were used for the property settlement, Gorin gave me \$1700 altogether. I didn't say that he gave me three payments. I can remember my own statement now. Altogether he gave me \$1700, \$700 of which was used in the property settlement with Mrs. Salich. Before this \$700 there may have been five other individual occasions during which he gave me \$200 at a time. Those five individual payments were a couple of months or a month and a half apart. The occasion when he gave me the first money, what occurred was this: I had a rather large gasoline bill to meet about that time, so most of that money, went to that. I believe that was some time, either the first part of March, or I believe so because

the bill was received by me some time in February. That was not the occasion on which Mr. Gorin and I came to an agreement to the effect that I would furnish him with certain information from the files of the Naval Intelligence Office. To the best of my recollection, I believe we had come to such agreement before I received the first money. A matter of possibly two weeks elapsed between the time that I made this agreement and the time I received the \$200, but it is merely guesswork on my [430] part, however. To the best of my recollection, I received the first \$200 in March. Between the time that I and Gorin came to the agreement relative to the furnishing of this information and the time he paid me the first \$200. I furnished him that information concerning the Far East Research Institute meeting at which a certain British captain was present and certain anti-Semetic and anti-American utterances were made. That is the only information I furnished him before I received the \$200. At some later meeting, I received \$200. The second time I furnished him information of the type I pointed out earlier in my testimony; I probably received another \$200 in the middle of April or the first part of May. Up to that time I had furnished him information of the type I identified here earlier in my testimony. That is the only information I furnished him. For the entire thing, through the entire relationship with Mr. Gorin, I received \$1700,

which I stated before I considered more or less of a loan. To the best of my recollection I don't think I gave him a receipt for the money. I did not give him any note for it. I gave him no written note of any kind. However, I was accustomed with people on oral statements, as I made my agreement with my wife orally, borrowed money elsewhere on my oral promise to repay. The bank required a note when I borrowed the \$250 from it. Gorin didn't require anything from me as evidence of my obligation to him. During the period of time he made five payments of \$200 each approximately a month and a half apart. Gorin told me-if I may qualify myself, your Honor-through some peculiarity of Russian idioms, I don't remember whether he said Moscow or whether I understood him to say Moscow or whether he said superior officers; he did say that somebody higher above was dissatisfied with the type of reports that I was furnishing him. He did not say who that was at any time. That was shortly after our second or third meeting took place, to the best of my belief. That may have [431] been some time in June or in July or August, even. I did not receive money from Gorin every time that I contacted him after our agreement early in March of 1938. I saw him at the time when I did not receive any money from him. Up to the 10th of December, I had received from him money at about seven different times. During the period

I would say I saw him ten to fifteen times; I would say closer to fifteen times. I did not give him information each time I saw him. When we came to an understanding, no definite understanding as to the amount that he was to pay me was arrived at. At the first time that I received money, I did not know in advance how much I was going to receive. I didn't ask for any specific amount but told Gorin of my distressed financial condition. As nearly as I can recall now, it came from our conversation concerning my wife where I believe he stated that she was at his house and had acted somewhat unpleasantly. To the best of my recollection I think that was the occasion when I told him that I was having difficulties in my domestic life as well as my financial status. When I received the second payment of \$200, I had no positive knowledge of the fact I was to receive the other \$200, because at no time before the specific amount of \$500 was mentioned was there mentioned any amount which I was to receive. I did keep track of the money, however, mentally, how much I received from Mr. Gorin. In July or August I had some discussion with him relative to the fact that this material or information wasn't what his superiors expected, and then, I continued to furnish him with the same type of information. When he told me that the information was of gossip character, was of no value, I told him that that

was the best I could furnish, and I also told him that I was in no condition to furnish any better type of information than that and perhaps, under these conditions, my furnishing him with any further information should be terminated. He then replied that I need not feel that way about it; that some of this inconsequential information somewhere, somehow, might fit [432] in some picture, certain picture, and that he, therefore, preferred that I should keep on doing what I was doing. Then I received the \$500 to make the property settlement with my wife in early November, and I am not very certain as to the date or when I received an additional \$200; but the additional \$200 was received about the dates mentioned, or possibly two or three weeks before the time of my first contact and detention by Mr. Dierst's organization. My financial distress was occasioned by the fact that I was having to pay my wife approximately \$125 a month. When I made the settlement early in November that terminated my responsibility for the cash payment. For the cash payment it did. However, there were other provisions in the property settlement whereby I was to pay for accumulated furniture storage bill which was a matter of over \$93. I was to pay for two or three department store bills. One bill, particularly, was for over \$40. I was also to pay the attorney fee in connection with executing this instrument. I don't know just

without looking at the property settlement whether or not there were any other provisions which called for additional money on my part. The \$250 borrowed from the bank at Terminal Island was to take care of some personal bills of my own. The last \$200 was to be the last payment that I was to receive from Gorin, according to my own belief and to my own knowledge.

After I reported for duty to work for the Naval Intelligence, I knew that I was to conceal my identity. I don't believe I knew it before. It does not stand out in my mind at all at the time that I was to conceal my identity entirely. During my employment I carried a police badge and represented myself as being connected with the Los Angeles Police Department. I used it where it was necessary to show that I had some authority as a police officer. I did not make application for a position with the Naval Intelligence directly. I made it through the Undersheriff of San Diego County, Mr. George Brereton, whom I knew yersonally and with whom I had friendly relations. I recognize the letter you show me, dated August 10, upon receipt of which I proceeded to San Diego. It was received by me from Mr. George A. Brereton of San Diego. [433]

There was then offered in evidence as against the defendant Salich alone and not as against the defendants Gori, said letter, to the introduction of

(Testimony of Hafis Salich.)
which defendant Salich objected upon the ground
that it was immaterial and did not tend to prove
or disprove any issue in the case

Objection overruled. Exception allowed.

The letter was received as

## GOVERNMENT'S EXHIBIT NO. 8,

and is in words and figures as follows:

August 10, 1936

Mr. Hafis Salich Berkeley Police Department Berkeley, California

## Dear Salich:

I talked with Commander H. C. Dayis, Intelligence Officer, Headquarters, 11th Naval District, this morning (he had been away for a few days) and he accepted my recommendation of you for the position which he has in the Los Angeles area. The salary will be \$250 per month and \$1000 per year expenses. You may have the job just as soon as you can report to him for work—the sooner the better.

I am writing a letter to Chief Greening and am enclosing a copy for your information. Please do not tell anyone in Berkeley excepting the Chief and the City Manager as any information that might connect your leave of absence with me or the Government would probably destroy your usefulness.

I suggest that you make arrangements as soon as possible to see Commander Davis at the 11th Naval District Headquarters, [434] third floor, as soon as convenient. I am leaving on vacation for two weeks this coming Friday, so if I am not here, go to him directly. You can usually see him any morning, and most afternoons excepting Saturday or Sunday.

With best of luck, I am, sincerely, GEORGE A. BRERETON.

(Witness continues) I worked as a clerk for about a month in the Naval Intelligence Office at San Pedro. I also write shorthand. During that period I had access to everything in that office in the daytime; although at night time-that is, the closing hour of the office-the safe was locked up by the officer in charge. These reports that we referred to heretofore in the testimony of myself and other witnesses was usually kept in the upper right-hand drawer of the desk of the Chief Yeoman. About three times a week I would review the new reports so that I would know the nature of the cases that the Naval Intelligence were investigating. I also knew that there was a file covering the various reports that was retained in the safe and which reports were evaluated and indexed under the names. The information which I furnished Mr.

Gorin was partially oral and partially written. The written reports that I gave, I wrote those up in my apartment entirely from memory. I would not make memoranda in shorthand and then from those shorthand notes write up the reports. I would like to qualify that. I do remember having made shorthand notes on a man named Shumovsky, who was carried in our files as a possible suspect of some nature or other. It was my intention to inquire of Mr. Gorin as to what he knew concerning Mr. Shumovsky, and I wanted to have all the data possible in my hands at the time that I asked him these questions. That is the only occasion that I can remember of having made any shorthand notes of any kind pertaining to the reports contained in our files. I did not give him information on reports of virtually all the Japanese [435] investigations. I gave him a large number of reports pertaining to Japanese activities. I would not say I gave him hundreds of reports on Japanese. If I said tens of reports on Japanese activities, it would be more

Gorin gave me that letter of introduction about January 8th. However, I had met him several months before. At the time be produced the letter of introduction, he proposed to me the furnishing of certain information. I either declined it outright, or I told him that I would think the matter over. Then the following day I told the incident

to Lt. Commander Roachefort. I remember having told Mr. Roachefort about that, and I think he told me to determine further as to just what Gorin wanted, what he was interested in. At one of these meetings at the office he did say that I should take Stanley with me. At the time I talked to Lt. Commander Roachefort relative to the proposition of Mr. Gorin, I informed him that Gorin had offered financial assistance. I did not tell him what financial assistance. There is a confusion in my mind as to sequence and continuity of these meetings that took place between Mr. Gorin and myself, as well as my reports to Commander Roachefort as to my contacts with Gorin. In substance and collectively, I have already testified yesterday as to what occurred and what I had reported to Lt. Commander Roachefort. Following this conversation with Lt. Commander Roachefort, I again contacted Gorin. and I was alone when I contacted him. I don't remember now if Lt. Commander Roachefort made that statement concerning Stanley at that other meeting. I remember that Commander Roachefort told me to see Gorin and ascertain his proposition and to take Stanley along. After that conversation I again contacted Gorin and Stanley was not with me. I don't remember now if I reported that to Commander Roachefort or not. To the best of my recollection now, I don't think I did. However, I reported to Lt. Claiborne at the time I gave him

(Testimony of Hafis Salich.) information about some engineers, that that information [436] came from Gorin. I did not advise Commander Roachefort that I had received \$200 from Gorin and did not tell my superior officers that I was giving this information to him. I communicated information which I received from Gorin to the office; all the information that I thought was worth while. To the best of my memory, Gorin told me that on one occasion he had an American employed. With reference to the information which is noted in Mr. Diert's statement, Government's Exhibit No. 4, to the effect, "Gorin told Salich on one occasion that he had an American employed but had fired him because he was unreliable; and he also said that a similar check was being made on Japanese activities in San Francisco, and Salich saw part of a typewritten report about Ted Yasunaga or Yasukawa, and something about the subject being a graduate of Galileo High School," I made a report on that. I don't remember if I made it in a written form I reported that particular item to Lt. Commander Roachefort, and I believe Mr. Stanley was within the hearing or I had discussed that particular item with Mr. Stanley. I remember having discussed it with Stanley for sure, and I remember having reported to Lt. Commander Roachefort the subject matter of Tedand the name mentioned there. I believe at this time that I told Lt. Commander Roachefort that

Gorin was having a check made in San Francisco of Japanese activities, but my belief is positive that I discussed that item with Mr. Stanley. I made my reports to the commanding officer in charge of the office. To the best of my belief, I reported that Gorin had told me that he would see that I got a trip to Russia, and that the Russian government as a part of their propaganda program paid for trips to Russia of members of certain organizations, and that it could be arranged for me to make one of these trips. It was not in writing, orally. Sometimes I made my reports in writing, sometimes orally. Sometimes from oral reports either Roachefort or Claiborne would make handwritten notes which they would then dictate to the secretary. I did not [437] advise Commander Roachefort or Lt. Commander Claiborne that Moscow was dispatisfied with the information that I was furnishing. To the best of my belief I did not call my superior officers' attention to the fact that Gorin said he knew Captain Bakesy, and that he had come to Gorin's San Francisco office, nor did I report to Lt. Claiborne that Gorin had mentioned a Simons in San Diego who was supposed to be studying Japanese. I remember having made a statement to Lt. Commander Roachefort at one time to the effect that I was informed Russians had no known agents working against this country, or agents working against this country. I don't even remember at this mo-. ment if I mentioned the names of Hillman and

Kovac to Gorin, but if I did or if Gorin gave me any such information, that information was not turned over to the office. With reference to report No. 1066, I have no recollection at this time of ever having approached Gorin with this piece of information in any connection. I have no recollection of having discussed with Gorin and having asked him any questions about Hillman and Kovacs At different times I discussed with him various Communists that were under investigation. I have checked with him on various names that I thought he might be able to help me on. I asked him concerning some names, not necessarily indicating that they were under my investigation by the Naval Intelligence Office. When Gorin approached me on the matter of furnishing information, I told him that I had no opportunity of making independent investigation and that I would have to rely upon our Naval Intelligence reports. I discussed Shumovsky with Gorin. I had no specific recollection as to what he said. The information as given to me by Mr. Gorin concerning Shumovsky is contained in the files at San Pedro. He did say that Shumovsky was a student at Massachusetts Institute of Technology; that he was a very brilliant student; that he received, as a result of his ability and industry, an American scholarship or some sort or another and that the man was a technician rather than anything else. [438] I reported

that item of information concerning Shumovsky down at the office; I reported what he told me. the information I obtained in line with other items of information which were obtained in similar cases elsewhere. I mentioned the name of Gorin to Lt. Commander Claiborne and can remember at least one occasion when I mentioned his name specifically to him. I remember when Lt. Claiborne took over the office at San Pedro. I do not recall him going through a list of names with me when he first took over the office, during the month of June, 1938. I recall no specific occasion when Lt. Claiborne asked me concerning Gorin. I believe, though, there was a conversation at least once concerning Gorin and myself with Mr. Claiborne. That conversation, the one specific conversation which I am sure of, took place after I obtained the information concerning the Russian engineers. I made a practice of divulging the source of information; sometimes I did not. I was personally in favor of divulging it, although my colleague at the time thought that such source of information should not necessarily be turned over to the Commanding Officer. There was no general practice, in so far as that is concerned. The source of information was given either in written form or orally, or sometimes, to the best of my recollec-. tion, it was not.

My expression "in our cards," as listed in Government's Exhibit No. 3, meant the 5x8 index names file which was maintained in our office, which was available to me. It was maintained in the safe, but the safe was open in the daytime and the information and that particular file was available to me. I consider the information I gave Gorin harmless, innocuous and valueless.

Whereupon there was offered and received in evidence and read to the jury that document there-tofore marked Defendant Salich's Exhibit A for Identification, and which was marked Defendant Salich's Exhibit A. Said exhibit is a writing, a property settlement agreement [439] between the defendant, Hafis Salich, and his wife, Velma I. Salich, purporting to settle and determine the property rights of the parties and providing for the payment by defendant Salich of certain sums of money.

#### Redirect Examination

By Mr. Stone:

I believe it was Mrs. Salich that suggested that the property settlement agreement be executed. This was some time either in September or the early part of October. We went to see the attorney about a week before, four or five days before the actual execution of that paper.

I saw Aliavdin altogether about three times in San Francisco. At one of those meetings I made

Mr. Aliavdin and myself were present at the time. We were discussing opportunities for advancement in the police department; whereupon I mentioned that I had made an application for service with the Naval Intelligence in Southern California. The date of that was, I believe, some time in late spring of 1936. After I came down to Los Angeles in August of 1936, I thereafter saw Mr. Aliavdin. I may have seen him about six or ten times. I don't remember the exact number of times I saw him while he was here in Los Angeles. The first time he saw me he called at my apartment, 545 South Hobart, one Tuesday morning, I believe.

Q. Did you at any time discuss with Mr. Aliavdin your work with the Naval Intelligence Service or the fact that you were connected with it?

To which question the Government objected on the ground that it was hearsay and did not tend to prove any of the issues in the case.

Objection sustained. Exception allowed. [440]

(Witness continues) When I left Russia I had a number of relatives left there. Some of them are still living there now. I discussed these relatives with Gorin. On one occasion that I can remember of took place some time either late summer 1938 or early fall of 1938. I told him I received a letter from my uncle, wherein he stated that he was out of his employment. Concerning my relatives, I be-

lieve Gorin told me that either his friends or his associates or his superiors had investigated my parents and relatives while in Russia and found that their government had nothing against them, or a statement to that effect. I talked with Gorin concerning Shumovsky, who told me who the man was. There was a file on Shumovsky in our records at the office. I don't recall exactly whether that information was requested by my superior officers or not; but at any rate, having read about Shumovsky in our files, I was curious in connection with my duties as investigator for the organization, whether or not any additional information could be obtained from someone that knew Shumovsky. I presented that information in the form of a report to my superior officers in writing. I don't remember whether the written report mentioned . Gorin's name or not. I may have accompanied this written report with oral comments to my commanding officer, who, at that time, was Lt. Commander Roachefort. I never told Lt. Commander Claiborne or Commander Roachefort that I was receiving money from Gorin.

## Cross Examination

By Mr. Pacht:

Now that you mention it, I recall that Gorin told me that Shumovsky was representing the Department of Heavy Industries of Russia in the

purchase of millions of dollars worth of machinery in this country. To the best of my memory I recorded that information in my report, and did indicate to the office that information concerning him came from Gorin. I did not obtain information from other sources about Shumovsky other than Gorin. I met Aliavdin through Mr. Griffin, a member of the Berkeley Police Department. [441] I remember his statement that he met Aliavdin through Mr. Troyanovsky whom he contacted in some form of official capacity. Gorin never asked me to give him any information other than information touching the activities of Japanese espionage agents. I believe there was a topic of conversation between Mr. Gorin and myself concerning some form of activity similar to guerilla warfare which might be conducted on Russian territory in case there was an actual armed conflict between the powers mentioned, namely, Japan and U.S. S. R. I don't believe there was a specific mention made by Mr. Gorin that he was interested specifieally concerning the Japanese espionage agents in Russia. To the best of my recollection now he was interested in Japanese activities generally in Southern California, and to my inquiry as to what possible connection the activities of local Japanese would have with suspected espionage by Japanese in Russia. I believe he mentioned that he believed the Japanese service—that is, the espionage service

-had worldwide ramifications and that what they did in any other part of the world might directly or indirectly have a bearing as to what the Japanese did in their own country, namely, U. S. S. R. He told me that if he came into possession of any information of Japanese espionage activities in this country which would be of benefit or interest to the United States he would turn this information over to me for the use of the Naval Intelligence. From time to time I discussed with him activities of so-called Japanese espionage agents, although I hesitate to use that word. Gorin and I did discuss a number of Japanese and the names of Japanese that lived in Southern California. In point of fact, I don't know of my own knowledge whether any of these Japanese people whose names are mentioned in these reports were or were not espionage agents. I never abstracted from the records, files, or safes of the office of the Naval Intelligence, a record of my own self or any information which was contained in the office of the Naval Intelligence concerning myself. Before I received [442] the letter from the Deputy Sheriff in San Diego, I told several people in San Francisco, and not only Mr. Aliavdin, that I was about to make the connection with the office of Naval Intelligence. Some of these other people were Americans, and my parents, who were Russian.

3

(Testimony of Hafis Salich.)

I heard the testimony about a call which Stanley and I made at 451 South Ardmore upon the occasion of the visit here of the Russian flyers in July of 1937. I did not go to visit or see Gorin on that occasion. I did not even know Gorin was supposed to live there. I did not tell Stanley that we were going to see Gorin for the purpose of seeing the Russian flyers. I said we were going up there simply to try and see the Russian flyers.

#### Recross Examination /

By Mr. Harrison:

I expected Mr. Yudin to be occupying these premises known as 451 South Ardmore. Thereafter, when I had occasion to call at the house to see Mr. Yudin or whomever I would be able to contact and learn something about a Mr. Kaganovich, I found Mr. Gorin.

#### Recross Examination

By Mr. Pacht.

That was some time in the summer of 1937—I know it was after the arrival of the Russian flyers. I imagine it was around August, either August or September of 1937. I testified on direct examination that Mr. Gorin came to my house on West Fourth Street in the late fall of 1937. I called at 451 South Ardmore some time after the incident of Yudin's took place to obtain information about a Mr.

Kaganovich. When we went to 451 South Ardmore in connection with the Russian flyers in an attempt to see them, I did not tell Mr. Stanley I was going to see Gorin. I reported the information that I got regarding Kaganovich to my superiors. [443]

Whereupon, by stipulation of counsel testimony of August Vollmer, a witness for the defendant. Salich, theretofore taken on the stand in the absence of the jury with the understanding that it would be later read and considered as the testimony of Mr. Vollmer, was read to the jury. His testimony follows:

## AUGUST VOLLMER,

called as a witness on behalf of the defendant Salich, being sworn, testified as follows:

## Direct Examination

By Mr. Stone: .

I reside at 923 Euclid, Berkeley, California. I am retired. On July 1, 1930, I had a dual position: I was Professor of Police Administration at the University of Chicago and also Chief of Police of Berkeley, California. At that particular moment I was acting as Chief of Police in Berkeley, where I served in that capacity from April, 1905, to July 1, 1932. I served as Chief of Police in this city for a

(Testimony of August Vollmer.)

year, 1923-'24, and have had considerable experience in police work and experience in dealing with men in police work. On July 1, 1930, Hafis Sanch became a patrolman in the Berkeley Police Department. Prior to that time he had filed an application for that position. After that time he served with the Berkeley Police Department approximately four years. Part of the time he served in the capacity of secretary to me; patrolman part of the time, and acting sergeant part of the time. During that period his general reputation for truth and integrity and veracity in Berkeley and in the Berkeley Police Department was excellent. His general reputation was never questioned by anyone outside of the Berkeley Police Department in Berkeley; all that I heard about him was good. His reputation in Berkeley today is excellent.

Whereupon there was offered in evidence by the defendants Gorin and Salich the article respecting the peril of Japan, beginning [444] on page 40 of Volume 1, No. 1, Ken magazine, April 7, 1938, to which offer the Government objected upon the ground that it was incompetent, irrelevant and immaterial and did not tend to establish any of the issues in the case.

Objection sustained, Exception allowed.

Whereupon it was stipulated between counsel for the parties that if Mr. Fred Howard was sworn and testified, he would testify substantially to this effect: that he is the owner of a property at 10723 Ohio Avende, Westwood, this city; that Mr. and Mrs. Gorin and their child lived in that house, which is a triplex apartment house, from March 22, 1937, to September 22, 1937; and that they had a six months' lease and lived there during all of that time.

Whereupon the defendant Salich rested his case, and the defendants Gorin rested their case, except as certain motions to strike theretofore presented to the court and except also for a motion for a directed verdict:

# HENRI DeB. CLAIBORNE,

recalled as a witness on behalf of the Government, in rebuttal, having been previously sworn, testified as follows:

## Direct Examination

By Mr. Harrison:

During the time that I was in charge of the Naval Intelligence Office at San Pedro, I remember mentioning the name "Gorin," and I remember Salich mentioning the name of "Gorin" to me. I first officially took over the office the first of June, 1938. At that time I asked in a general way who Gorin was, and I was answered in a general way as I recall, that he, Salich, was acquainted with Gorin, who was manager of the Intourist Bureau

(Testimony of Henri DeB. Claiborne.)
here, that was in a travel business and took care
of people who wanted to go to Russia. I can recall
no other instance in which Gorin was discussed in
the office or outside with Salich. To the best of
my knowledge, Salich never filed a report with me
that mentioned the name of Gorin. [445]

#### Cross Examination

By Mr. Stone:

I read the file on Gorin in the office of the United States Naval Intelligence Service. The file itself was not discussed. The name was mentioned in June, just after I took over the office. In the file that was kept on Salich in the office, Gorin's name was mentioned. I never discussed the contents of that file with Salich.

Whereupon the Government rested its case.

Whereupon the defendants Gorin made a motion for a directed verdict as to each one of the counts of the indictment upon the grounds assigned, and given, and stated to the Court in the motion for directed verdict made at the close of the Government's case. Motion denied. Exception allowed.

Whereupon the defendant Salich made a motion for a directed verdict as to each one of the counts of the indictment upon the grounds assigned and given and stated to the Court in the motion for directed verdict made at the close of the Government's case. Motion denied. Exception allowed.

Whereupon the cause was argued to the jury, Mr. Neukom making an opening argument on behalf of the Government, Mr. Pacht arguing on behalf of the defendants Gorin, Mr. Stone arguing on behalf of the defendant Salich, and Mr. Harrison making the closing argument for the Government.

At the close of the Government's case and before othe motion for a directed verdict was made by the defendants, defendant Mikhail Gorin made a motion to strike certain portions of the testimony which had been admitted theretofore over his objection with leave granted to thereafter move to strike the same, and by stipulation of the parties ruling upon said motion was deferred by the Court, it being agreed that such ruling be deemed to have been made and ruled upon prior to the ruling upon the motion by defendant Gorin for a directed verdict at the close of the Government's case, After. both parties had rested, the Court ruled upon said motion to strike and granted it in part and denied it in part, and in so far as it was granted instructed and stated to the jury as follows:

Gentlemen of the jury, you are now instructed to disregard, as to the Defendant Mikhail Nicholas Gorin, the following testimony, which was received subject to a motion to strike. 25

This, I might explain to you, was during the testimony of Mr. Hanna, I believe:

"Q. Will you recall the substance of the conversation as you heard it, and in doing so refer to, explain to the jury who was doing the talking. The question was by Mr. Neukom, and referred to a conversation held between Mr. Salich, Commander Rochefort, and Mr. Stanley in the new Postoffice Building in the middle of March, approximately, 1938.

"The Witness: Salich told Commander Rochefort that he had contacted Mr. Gorin and that Mr. Gorin had offered him certain moneys. He asked Commander Rochefort whether or not he should continue to contact Mr. Gorin. Commander Rochefort told Salich not to contact Gorin more and that if he did, he would have Stanley with him.

"Mr. Neukom: He would what? [447]
"A. He would have Stanley with him."

That conversation, gentlemen of the jury, is not binding upon the Defendant Gorin and should be excluded from your consideration.

Question by Mr. Neukom (and this you are instructed also to disregard as to the Defendant Mikhail Nicholas Gorin):

"Q. Now, do you recall approximately what date this was! (Referring to a conversation.)

"A. I would say it was either September or October. I couldn't give you the date.

- "Q. Of 1937?
  - "A. 1937. ·
- "Q. Was anyone else present in the room where this safe was besides Mr. Salich?"
- I said "conversation." It was an occurrance in the room in the Postoffice Building.
  - "A. I was there with Mr. Salich.
  - "Q. And did you leave the room for any length of time?
    - "A. I would say about four or five minutes.
  - "Q. And when you returned, was anyone else present in the room besides Mr. Salich?
    "A. No one.
    - "Q. And did you-"

Then there were objections and remarks by the Court. The answer was repeated: "No one." And the question: "Did you Question by Mr. Neukon:

"Did you observe who was in the room when you returned?"

- "A. Yes, Salich was there.
- "Q. Nobody else ? [448]
- "A. Nobody else.
- "Q. Did you observe the condition of the safe, the small safe, when you returned?
  - "A. The door was opened much wider.
- "Q. Did you have any conversation with Mr. Salich with respect to that situation?
  - "A. I did not mention is to him."

That occurrence, gentlemen, you are to disregard in connection with the guilt or innocence of the Defendant Mikhail Nicholas Gorin.

You are instructed to likewise disregard the following conversation or occurrence as to the Defendant Mikhail Gorin. This is during the testimony of Mr. Stanley.

"Q. Just relate the substance of the conversation at that time."

The conversation alluded to was in May or June, 1937, between Mr. Salich and Mr. Stanley.

"The Witness: He told me he had a Russian friend named Gorin who may be a good informant for us."

### Question by Mr. Harrison:

"Was that the substance of the conversation at that time?

## "A. Yes, sir."

Following very shortly after the conversation previously alluded to, referring to another conversation in July of 1937, the same parties present, Salich and Stanley:

- "Q. Give us that conversation.
- "A. He asked me, would I like to see the Russian flyers.

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- "Q. Is that all that was said?
- "A. I told him I would.
- "Q. What else was said?

"A. He said, 'We will drive over to Gorin's house. They are over there.'

That you are instructed to disregard in connection with the guilt or innocence of the Defendant Mikhail Gorin.

You are likewise to disregard the following conversation between the same parties, occurring shortly thereafter in the testimony (the same parties were present on this):

"Q. Will you give us the substance of this conversation, Mr. Stanley? (Question by Mr.

Harrison)

"A. May I have that question?

"(The record referred to was read by the reporter, as follows:

"'Q. And you fix that date as when?

"A. It is either the last week in December of '37 or the first of January '38.

"Q. Will you give us the substance of that conversation?

"The Witness: Salich asked me to ride out to Gorin's home with him."

Question by Mr. Harrison:

"Is that all that was said?

"A. He may have given me the reason at the time, but I don't recall it."

You are instructed to disregard that conversation in connection with the guilt or innocence of the Defendant Gorin. [450] This is a conversation between Salich and Stanley and referred to a certain dinner, alleged dinner, at Perino's on Wilshire Boulevard.

This remark by Stanley you are directed to disregard and not consider it in connection with the guilt or innocence of the Defendant Mikhail Gorin.

- "A. And I told him I didn't like it on account of the confidential nature of our business. I thought it was dynamite to play with it and I advised him to tell Mr. Rochefort, who was then our commanding officer."
- "Q. What, if anything, did Mr. Salich reply to that?
- "A. There wasn't much said on it from then on down to San Pedro."

That you are directed to disregard.

The following part the jury are instructed to disregard, in arriving at the guilt or innocence of the Defendant Gorin. This is a conversation between the same parties, occurring some time in March, apparently, of 1938:

"A. To the best of my knowledge at this time, I told him," said Stanley, "at that time, if you don't tell the boss about this, I am going to tell him."



- "Q. What did Mr. Salich answer to that?
- "A. He sort of quieted down about it. I don't think he said much about it."
- "Q. Did he say anything further, do you recall?

"A. No, I don't believe so. We drove on down to the office at San Pedro."

You are instructed to disregard that. Referring again to a conversation between Stanley and Salich occurring some [451] time in March apparently:

"Q. Now, will you give us the substance of the conversation and discussion that you people had in the Naval Intelligence Office in San Pedro where all four of you were present, as

you have indicated?

"The Witness: Mr. Rochefort was sitting at his desk in the room and Mr. Salich and myself were standing opposite his desk and Mr. Salich told Mr. Rochefort that he had been approached by Mr. Gorin with a proposition to turn over certain information to Mr. Gorin.

"Q. And what was said by either you or Mr. Rochefort in the presence of Mr. Salich?

"A. I had nothing to say. Mr. Rochefort told Mr. Salich that he didn't want him to contact Mr. Gorin again unless I was with him."

That conversation you are particularly instructed

to disregard, that portion of it.

You are instructed to disregard the following statement by Mr. Stanley in a conversation with Mr. Salich, which occurred evidently in March, 1938:

"A. He wanted my opinion," said Mr. Stanley on the witness stand, "and I told him I thought it was on account of the confidential nature of our work that he was playing with dynamite."

That you are directed to disregard.

This, gentlemen, refers to two paragraphs, I believe the last two paragraphs of Government's Exhibit No. 3,—what is the number, gentlemen?

Mr. Neukom: That is correct.

The Court: "Q. Upon your examination I would ask you if any part of this document pertains to any investigation conducted by you.

"The Witness: It does."

[452]

"By Mr. Harrison:

"Q. What part, if any?

"A. The last two paragraphs.

"Q. Did anybody assist you in making that investigation?

"A. No, sir. I was alone."

Gentlemen, you are instructed to disregard that part of the testimony in arriving at the guilt or innocence of the Defendant Mikhail Gorin.

You are instructed, gentlemen of the jury, to disregard the following in connection with the guilt or innocence of the Defendant Gorin and/or the. Defendant Natasha Gorin from the testimony of the witness Roy Hanna:

"Q. Being an enlisted man in the United States Navy curing the time that you were engaged in your duties, are you permitted to make suggestions or give orders to your superior in command?"

That will be stricken, and you are directed to ignore it.

The second sub-division of the same motion, referring, gentlemen, to the same subject matter:

"The Witness: May I have the question,

"Mr. Neukom: Read the question.

"(The record referred to was read by the

reporter, as follows:

"Being an enlisted man in the United States
Navy during the time that you were engaged
in your duties, are you permitted to make suggestions or give orders to your superior in command?"

"The Witness: I am not."

That you are directed to ignore.

You are instructed, gentlemen of the jury, to disregard the following testimony of Commander Ellis M. Zacharias, referring to a meeting, on redirect examination, which was held in the of--[453] fice at San Pedro.

"The Witness: This meeting was called at my instigation for this particular group, for the purpose of giving them instruction—

"Mr. Pacht (Interrupting): Just a minute."

By Mr. Harrison: "Was it restricted to any
particular group?

"A. I will discontinue. You say was it restricted?

"The Court: Was the call restricted to any particular group?

"The Witness: It was.

"By Mr. Harrison:

"Q. Who was present, besides the ones you have named?

"Mr. Stone Pardon me a moment. I think that question has been answered two or three times."

That you are instructed to disregard.

The next motion is 2, sub-division 2 of 5, appearing on page 648, during the testimony of Commander Zacharias.

You are instructed to disregard the following (this seems self-explanatory):

"Q. Commander Zacharias (question being by Mr. Stone)—I am sorry. I guess it is by Mr. Harrison.

"Commander Zacharias, I will ask you whether or not the initials 'J. A. C. L.' have any well known meaning in your district Intelligence Office"—

I am sorry. That motion should have been denied. You may disregard that portion of my quotation just made, but do not disregard the evidence.

May it be stipulated that that need not be readagain?

Mr. Pacht: Yes, so stipulated.

Then referring again to the matter of which I spoke a few moments ago, the two paragraphs of that exhibit No. 3, in which Mr. Stanley said that he was alone when he made the investigation: [454]

"Q. Did enybody assist you in making that

investigation ? . .

"A. No, sir; I was alone."

By Mr. Harrison: "Q. After you made the investigation did you make any report covering such investigation?

"A. Yes, sir:

"Q. And what did you do with that report?

"A. Turned it over to Mr. Claiborne.

"Q. Was Mr. Salich with you at any time that you made such reports or investigations?

"A. No, sir.

"Q. And was the contents of that report ever communicated by you to Mr. Salich?

"A. No sir."

That, gentlemen, you are instructed to disregard in arriving at the guilt or innocence of either the Defendant Mikhail Gorin or Natasha Gorin.

The same witness on the stand, the following you

are instructed to disregard:

"Q. Mr. Stanley, do you know about when you made such investigation? (Referring to the same subject matter as the previous conversation.)

"Mr. Stone: I now object to the materiality and relevancy and competency of this testimony.

"The Court: The objection will be overruled, and an exception allowed."

"The Witness: I do.

By Mr. Harrison:

"Q.\ When was it?

"A. It was during the month of September, 1938.

"Mr. Harrison: I think that is all. Just a moment. I believe, if the Court please, for the purposes of the record it [455] should be fully disclosed as to just what portion of this document is referred to, and on that theory, I would like to ask the witness a question or two more, if I may.

"The Court: You may.

"By Mr. Harrison:

"Q. Mr. Stanley, referring to this again, do I understand that the portion that you claim was covered by an investigation and report made by you, covers the last two paragraphs, the first of which consists of two lines and one word, the second paragraph of three lines, all in typewriting?

"A. It would be four lines-

"Q. Four lines and three words?

"A. Yes, sir.

"Mr. Harrison: That is all."

You are instructed to disregard that in arriving at the guilt or innocence of the Defendants Gorin.

[456]

Defendant Gorin requested the Court, in writing, to instruct the Jury as follows:

"Defendants' Instruction No. G-29

As defined in the statutes in question in this case, the National Defense relates solely and is limited to the following places and things, namely:

Any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dock yard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, signal station, building, office, other places connected with the National Defense owned or constructed or in progress of construction by the . United States, or under the control of the United States, or any of its officers or agents, or within the exclusive jurisdiction of the United States, or of any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war, are being made, prepared, repaired; or stored under any contract or agreement with the United States, or by any person on behalf of the United States."

"Defendants' Instruction No. G-37

Unless you find beyond a reasonable doubt from the evidence in the case that the defendants Gorin copied, took, made, obtained, or attempted or induced or aided another to copy, take, make or ob-

tain a sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance. document, writing or note concerning a vessel, aircraft, work or defense, Navy yard, Naval station. submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, signal station, building, office, or other place connected with the national defense, as that term is otherwise in these instructions defined, and unless you further find that such sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing or note connected with said national defense was obtained with intent or reason to believe that the same was to be used in the injury of the United States or to the advantage of a foreign nation, you may not convict the said defendants Gorin, or either of them, but on the contrary, they are entitled to an acquittal at your hands. To put it another way, it is not sufficient for you to find that any document or report was obtained by the defendants Gorin, or either of them, from the Naval Intelligence. You must in addition find that such document was a sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing or note relating to said national defense, and concerned some vessel, aircraft, work of defense, Navy yard, Naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone,

wireless, or signal station, building, office, or other place connected with said national defense."

"Defendants' Instruction No. G-39

The evidence in this case discloses that many of the reports enumerated in the indictment deal with the arrival and departure of certain Japanese officials, Naval officers, and Japanese businessmen; other of said reports deal with the activities of Japanese fishing boats in Southern California waters; still others of said reports deal with the political and economic opinions of various and sundry persons; still other of said reports deal with the conduct of certain Japanese with relation to the support of the Japanese war in China, and the raising of funds for the prosecution of said war.

If you find that these reports or the substance of them, or any of them, were obtained by the defendant Mikhail Gorin from [457] the defendant Salich, or from the Naval Intelligence, that fact or circumstance would not make the defendant Gorin guilty of any of the offenses charged in the indictment. On the contrary, he is entitled to an acquittal at

your hands.

None of said matters relate to or concern the national defense as I have heretofore defined that term to you."

'Defendants' Gorin Instruction No. BB

You are instructed that if you find and believe from the evidence that the defendant Salich was instructed by his Superior and directing officer to continue contact with defendant Gorin, theretofore reported to said officer, after having reported contacts with him to his said superior officer, and if you find further, that Salich was instructed to give to. Gorin' information of a nature and character which could be obtained from newspapers and magazines and attempt to get from Gorin information of advantage to the office of Naval Intelligence, and if you further find that Salich pursued such a course during the times mentioned in the indictment, with or without disclosing said instructions to Gorin, you are instructed that there could be no conspiracy by or between said defendants as charged in Count Three of the indictment, and you are to return a verdict of acquittal as to all defendants on said count."

#### "Defendants' Gorins Instruction No. CC

You are instructed that none of the reports or, information introduced in evidence in this case, or therein referred to, is connected with or relates to the national defense, as that term is used in Sections 31, 32 and 34 of Title 50 of the United States Code, and that therefore you are instructed and directed to return a verdict of acquittal in favor of all defendants on all counts of the indictment."

"Defendants' Gorin Requested Instruction No. GG.

**[458]** 

You are instructed that Government exhibits 5a, 5b, 5e, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 5m, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 5m, 6n, 6o, 6p, 6q, 6r, 6s, 6t, 6u, 6v, 6w, 6x, 6y, 6z, 6aa, 6bb, 6cc, 6dd,

being files of the United States Office of Naval Intelligence, numbered respectively, 833, 841, 889, 1145, 1139, 1133, 1132, 1130, 1129, 897, 1110, 1104, 1081, 570, 560, 548, 546, 536, 535, 534, 532, 530, 529, 528, 525, 519, 514, 507, 505, 504, 503, 495, 489, 482, 480, 479, 477, 472, 469, 466, 465, 439, 435, and the information contained in them, do not, and each of them does not, affect or relate to the national defense."

"Defendants' Gorin Instruction No. FF-1

You are advised that the term "to the advantage of any foreign nation" as used in Sections 31, 32, and by reference in Section 34 of the Espionage Act, is defined as and is to be taken by you as meaning an advantage as against the United States. It does not mean to the advantage of a foreign nation against another foreign nation, but only as against the United States, unless it would also be of advantage against the United States. The word "advantage" is specifically defined as meaning a condition of being in advance or superior or in a superiority of state or position or condition or circumstance, opportunity, or means particularly favorable to success or to any desired end."

"Defendants' Gorin Requested Instruction No. FF-2

You are instructed that, if you arrive and agree upon a verdict of not guilty in favor of the defendant Natasha Gorin on the third count of the indictment, that is, on the conspiracy count, as to which count she alone is charged, I then charge you that

you must also find and return a verdict of not guilty as to the other two defendants upon count three of the indictment, that [459] is, the conspiracy count."

#### "Defendants' Gorin Instruction No. AA

You are instructed that, as I have heretofore instructed you, a conspiracy must be founded and based upon an agreement by and between each of. the defendants charged to accomplish the transmittal and communication to the U.S.S.R. of "documents, writings, plans, notes, instruments, and information relating to the national defense". An agreement of necessity means a meeting of minds as to the object to be accomplished. In this case it is charged in the indictment that the illegal purpose as to which defendants Salich and Gorin agreed, was to so transmit the "documents, writings, plans, notes, instruments, or information relating to the national defense", and I charge you that if you find and believe from the evidence that there was at no time any intent or purpose on the part of the defendant Salich to give any of such specifically mentioned items, even though you may believe that the defendant Gorin desired to and wanted to get such items, that there was no meeting of minds between the defendants Salich and Gorin sufficient to constitute an agreement or combination within the meaning of the law of conspiracy, sufficient to constitute a conspiracy, and you will return a verdict of acquittal in favor of the defendants as to the third count of the indictment."

"Defendants Gorin Instruction No. T

You are instructed that the acts charged, that is the alleged obtaining or transmitting or conspirácy to transmit reports of the office of Naval Intelligence, or information therefrom, by the defendants, must in each instance have been done with the intent on the part of defendants or reason on their part to believe "that it was to be used to the injury of the United States or to the advantage of" the U.S.S.R. I desire to define certain of [460] these words to you. "Injury" as used in the statutes under which this indictment is being prosecuted means damage or hurt done to or suffered by the United States in a military sense. Likewise, the word "advantage", as used in the statutes as a military connotation. The word "advantage" by itself means the condition of being in advance or superior or in a superiority of state of position, or any condition, circumstance, opportunity, or means particularly favorable to success or to any desired end. To give the meaning that the statute contemplates, there must be found that the information was obtained or disclosed with the intent or reason to believe that it was to be used to the injury of the United States and to the advantage of the U.S.S.R. as against the United States, all in a military sense. In other words the defendants in order to be found guilty of the specific intent charged in the indictment and required under the statute must have had a specific. intent or reason, as ordinary persons would have, to believe that the information obtained or transmitted

was to be used to do harm or injury to the United States in a military way, and to give to the U.S.S.R. a condition of superiority favorable to success as against the United States. The advantage must be both in a military sense and be an advantage not merely academic or general but an advantage as against the United States."

#### "Defendants' Instruction No. G-41

You are instructed that the defendants are charged in the second count of the indictment with communicating, delivering and transmitting to the Union of Soviet Socialist Republics the confidential reports of the investigators of the United States Naval Intelligence specifically described in said second count, and in the third count of said indictment with conspiring so to do. You are further instructed that the defendant Mikhail Gorin cannot be found guilty under said second or third count of so transmitting and com- [461] munication said reports solely by proof of the fact that he is a citizen or national of said Union of Soviet Socialist Republic or an agent or representative thereof. In other words, he cannot be said to transmit or deliver any of said reports to himself and it must appear from the evidence beyond a reasonable doubt, that said Mikhail Gorin did some other act or communicated with some other person or agency in communicating, delivering and transmitting said reports."

"Defendants' Instruction No. G-19

You are instructed that it is your duty as jurors to deliberate and confer one with the other fully and honestly about the questions herein involved under these instructions, but you are further instructed that after having fully considered and weighed the various points of view that may arise in your discussions among you that you are individually to arrive at your own honest judgment as to the guilt or innocence of each particular defendant on each count, It is not your duty, as a juror, to compromise your verdict with a view to rapid and hasty decision for purposes other than that of arriving at the sure and frank truth as it actually exists in each juror's mind, and if, after such discussions, any of you have a reasonable doubt as to the guilt of any or all of the defendants, it is not only your right but your duty to maintain your position and not to compromise your verdict."

"Defendants' Gorin Instruction No. K

You are instructed that unless you find and believe upon the evidence that it was the intention of the defendants Gorin to obtain information or to transmit information to the injury of the United States and to the advantage of the U. S. S. R. in a military sense, that is, so that it would do harm to the United States in a military way, or would aid the U. S. S. R. against the United States in a military way, such acts and conduct on their part

does not have [462] the necessary element of intent required under the law, and you will acquit said defendants."

Defendant Salich, in writing, requested the Court to instruct the jury as follows:

"Defendant Salich Requested Instruction No. X

.The second element which must be proved to you beyond a reasonable doubt for a conviction of the defendant Hafis Salich on the first count of the indictment is that the information obtained by him, if you find that he obtained any, related to the armed defense of the United States so closely that the ordinary reasonable man would immediately. perceive that its disclosure would directly endanger the armed defense of this nation in time of war. In determining this question you should consider the content of that information; whether or not it relates to any military works of the United States, such as navy yards, or forts, or munitions centers, or any property which is prepared for military use in time of war. You should likewise consider the possible uses to which such information could be put by another nation in making an armed attack on this country; whether or not the possession of such information by a foreign nation would endanger the success of our armed forces in time of war in their task of defending our shores; and whether or not the fact of such danger from the disclosi re of that information would be immediately apparent to the ordinary reasonable man."

Also the further instruction as follows:

"You are instructed that Government exhibits 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 5m, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 6q, 6r, 6s, 6t, 6u, 6v, 6w, 6x, 6y, 6z, 6aa, 6bb, 6cc, 6dd, being files of the United States Naval [463] Intelligence Service numbered respectively, 833, 841, 889, 1145, 1139, 1133, 1132, 1130, 1129, 897, 1110, 1104, 1081, 570, 560, 548, 546, 536, 535, 534, 532, 530, 529, 528, 525, 519, 514, 507, 505, 504, 503, 495, 489, 482, 480, 479, 477, 472, 469, 466, 465, 439, 435, and the information contained in them do not, and each of them does not, affect or relate to the national defense."

Whereupon the Court gave the following instructions to the Jury:

"The Court: Gentlem of the jury, under the Federal practice, the judge is privileged to comment on the facts of the case. You must understand, however, that such comments are mere matters of opinion which you, the jury, may disregard if such comments conflict with your own conclusions upon the facts.

The reason for this is that the jurors are the sole and exclusive judges of the facts in each case.

I feel, however, that I may safely leave the determination of the facts in this case to you, being satisfied, as I am, that you are fully capable of determining them without my aid.

However, it is the exclusive province of the Court to instruct you as to the law applicable to the case, in order that you may render your verdict upon the facts as determined by you and the law as given to you by me in these instructions. It would be a violation of your duty for you to attempt to determine the law, or to base any verdict, upon any other view of the law than that given you by the Court.

Whether the subject matter may be treated first or last in these instructions has nothing whatsoever to do with their relative importance. Repetition, if any occurs, does not make for greater importance. Any emphasis that you may give to any part of the instructions is intended to merely make the same more clear to you.

All requested instructions and all objections to proposed [464] instructions which have not been presented in a timely manner and in the form, with citations and authority, as prescribed by law or by the rules of this court are rejected.

You are instructed and directed to return a verdict of not guilty in favor of the Defendant Natasha Gorin on Count 1 of the indictment.

You are instructed and directed to return a verdict of not guilty in favor of the Defendant Natasha Gorin on Count 2 of the indictment.

filed by the Government against these defendants is not evidence, nor is the mere filing of said indictment to be considered by you as proof of the facts charged in it. However, so that you may have a clear understanding of what the indictment charges you are instructed as follows: This indictment charges the defendants in three counts with an offense against the United States. Count 1 of the indictment, briefly, pertains to the charge of obtaining information respecting the national defense by the defendants.

Count 2 charges, briefly, the communicating or disclosing of information pertaining to the national defense by the defendants or by one of the defendants, to one or more of tre other defendants, which persons are charged to be citizens or subjects of the Union of Soviet Socialist Republics.

Count 3 is the conspiracy count and charges in substance that the defendants did unlawfully confederate and agree to obtain the information respecting the national defense of the United States and thereafter sets out certain overt acts alleged to have been performed by one or more of said defendants in the furtherance of said conspiracy.

When you retire to the jury room for your deliberations, you will be permitted to take the indictment with you, so that you may [465] have before you the formal statement of the specific accusations against the defendants, and I have not attempted to be specific in connection therewith.

By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A

defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt or a bare conjecture; for it is difficult to prove a thing to an absolute certainty.

You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you. Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or other bias, to apply a strained construction, one that is unreasonable, in order to justify a certain ver- [466] dict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, your minds are in that stae where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his character for truth, honesty and integrity or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the Government or the defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or coroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

The mere fact that a witness is connected with the United States Government in any capacity whatsoever does not mean that the testimony of such witness is entitled to any greater weight or credence by reason of such fact alone. You will consider the testimony of any officer or employee of the United States Govern- [467] ment the same as you would consider the testimony of such person if he were not so employed.

There are two kinds or classes of evidence recognized and admitted in courts of justice, upon either of which jurors may return a verdict. One is known as direct evidence. Direct evidence is that which proves a fact in dispute directly, without any inference or presumption and which in itself, if true, conclusively establishes that fact. The testimony of eye witnesses to the commission of an offense is evidence of this character. The other class of evidence is indirect evidence or circumstantial evidence. Indirect evidence is that which tends to establish the fact in dispute by proving another and which, though true, does not of itself conclusions.

sively establish that fact but which affords an inference or presumption of its existence. Such evidence may consist of statements made by a defendant, plans laid for the commission of a crime; in short, any acts, declarations or circumstances admitted in evidence tending to establish the offense charged and to connect the defendant with its commission. For example: The witness testifies to an admission of a party to a fact in dispute. This tends to prove a fact, from which the fact in dis-

pute is inferred.

To warrant a conviction on circumstantial evidence, each fact necessary to the conclusion sought to be established must be proven by competent evidence beyond a reasonable doubt, and all the facts necessary to such conclusion must be consistent with each other and with the main fact sought to be proved; and the circumstances taken together must be of a conclusive nature, leading on the whole to a satisfactory conclusion and producing a reasonable and moral certainty that the accused committed the offense charged. The mere union, of a limited number of independent circumstances, each of an imperfect and inconclusive character will not justify a conviction; they must be such as to generate and to justify full belief [468] according to the standard rule of certainty. It is not sufficient that they coincide with and render probable the guilt of the accused, but they must exclude every other reasonable hypothesis. No other conclusion but

that of guilt of the accused must fairly and reasonably grow out of the evidence; the facts must be reasonably incompatible with innocence, incapable of explanation upon any other reasonable hypothesis than that of guilt.

Partial variances in the testimony of different witnesses, on minute and collateral points, are of little importance, unless they be of too prominent and striking nature to be ascribed to mere inadvertence, inattention, or defect of memory; that it so rarely happens that witnesses of the same transaction, perfectly and entirely agree on all points connected with it, that an entire and complete coincidence, in every particular, so far from strengthening their credit, not unfrequently engenders a suspicion of practice and concert; and that in determining upon the credence to be given to testimony, by the jury, the real question must always be, whether the points of variance and discrepancy be of so strong and decisive a nature as to render it impossible, or at least difficult, to attribute them to the ordinary sources of such variance, viz., inattention or want of memory.

If upon a fair and impartial consideration of all of the evidence in this case, you should find that there are two reasonable theories supported by the testimony in this case, and that one of such theories is consistent with the guilt of any of the defendants, and the other of such theories is consistent with innocence of any of the defendants, then it

is the policy of the law, and the law makes it your duty, to adopt the theory which is consistent with the innocence of such defendants, and in such case to find such defendants not guilty.

A defendant is a competent witness on his own behalf, and the fact that he is the defendant is not of itself sufficient to im- [469] peach or discredit his testimony, though the jury are entitled to take into consideration his interest in the event of the prosecution in determining his credibility.

One defendant has offered himself as a witness and has testified in the case. Having done so, you are to estimate and determine his credibility in the same way as you would consider the testimony of any other witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendant may have in the case, his hopes and his fears, and what he has to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to the bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable men.

You are to draw no inference of guilt against the Defendants Mikhail Gorin and Natasha Gorin, because they have not testified as witnesses in their own behalf. As heretofore stated in these instructions, they are presumed innocent of any crime, and

this presumption remains with them throughout the trial, until and unless the Government proves them guilty to the jury's satisfaction beyond a reasonable doubt. All defendants are free to testify or not, as witnesses in their own behalf, but no presumption or inference of guilt or any other prejudice against them can be indulged from their failure to testify.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to de- [470] liberate and cautious judgment; and while remembering that the defendant is entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testimony which was ordered stricken out, must be wholly left out of account and disregarded.

The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the facts. The law you must accept from the Court as correctly declared in these instructions.

You are instructed that in considering the evidence in this case you must consider each and every defendant individually.

You are instructed as a matter of law that you must not be antagonized at all by the fact that any of the defendants are aliens. All men, whatever their citizenship, stand equal before the law.

The defendant at the outset of the trial is presumed to be an innocent man. He is not required to prove himself innocent or to put, in any evidence at all upon that subject. In considering the testimony in the case you must look at the testimony and view it in the light of that presumption which clothes the defendant, that he is innocent, and it is a presumption that abides with him throughout the trial of the case until the evidence convinces you to the contrary beyond all reasonable doubt.

From time to time, counsel for the several defendants have [471] interposed objections to evidence. I charge you that the counsel for the several defendants not only had the right, but had the duty

to make any and all objections which they deemed advisable or appropriate, and no interence or presumption can or should be indulged in by you against the defendants or any of them by reason of the interposition of such objections by any of the counsel for any of the defendants.

When the statements of a party are introduced in evidence by the Government, all of the statements are to be taken together, and the Government is bound by such statements unless they are shown to be untrue by the evidence. Such statements are to be taken into consideration by the jury as evidence in connection with all the other facts and circumstances in the case.

You are instructed that there are certain regulations promulgated by the Secretary of the Navy and certain orders issued by him and by various administrative officers of the Navy Department from time to time, to regulate and govern the procedure, practices and functions of the various service branches, divisions and offices of the Navy, and its personnel, but I charge you that such regulations and orders cannot be considered by you in any wise as being a part of or in any wise interpreting or giving any meaning or construction to the statutes under which the indictment in this case is found, and this prosecution is being had. Neither are you to consider in any wise the opinions or conclusions of any witness who has testified before you relative to his interpretation or construction of the statutes referred to or the functioning of the Navy or the office of Naval Intelligence thereunder. You are only to consider, in connection with the law of the case, those instructions which I give to you, and you are to consider as the law of this case which is to govern you, only these instructions and the meaning and interpretation of the statutes, and the words and phrases therein used, as I have herein defined them to you. [472]

You are instructed that during the course of the trial certain stipulations have been entered into in open court relative to certain facts appearing. By such stipulations the defendants admit the facts stipulated to, but do not concede the guilt of any of the defendants. The only purpose of the stipulations is to permit quick proof of a fact which the Court may deem material. You are to take such stipulations only as proof of the specific fact or facts covered thereby.

You are instructed that you are to in no wise consider as a fact in determining the innocence or guilt of the defendants Gorin, nor are you to draw any inference of any kind whatever, from the testimony and statements related to you by the witness G. V. Dierst relating to or concerning any telephone calls or communications made by the defendant Mikhail Gorin to the Russian Embassy, or any officer or Charge d'Affaires, of the Union of Soviet Socialist Republics at Washington, D. C. No inference of guilt can be drawn from such acts.

The national of any friendly country has a right to communicate with his country's representatives in Washington.

You are instructed that the Union of Soviet Socialist Republics is now, and ever since the 16th of November, 1933, or thereabouts, has been a foreign nation regularly recognized by the United States of America.

You are instructed that the visit of M. I. Ivanushkin, Vice-Consul of the U. S. S. R., to the Defendant Mikhail N. Gorin when he was in the County Jail, was in accordance with the well settled practice and procedure recognized by international law. It was the duty and obligation of such a Vice-Consul in accordance with said practice to visit Mr. Gorin, as a Russian National, at as early an opportunity as possible. No inference can be drawn to support any of the allegations of the indictment herein by reason of said visit alone. As to any testimony relating to any statements made by Mr. Gorin during such a visit, you are the sole judges as to its [473] weight, even as you are the sole judges as to the credibility of the witnesses and the effect to be given to any such statements, if you find as a fact that such statements were made.

As the Court has heretofore advised you, it has granted a motion of directed verdict as to the Defendant Natasha Gorin on the first and second counts of the indictment. A charge you that the fact that the Court refused to grant defendant's

motion as to the third count of the indictment shall not be taken by you in any wise as indicating the Court's opinion as to her guilt or innocence of the offense therein charged. You are the sole judges of the evidence and of her guilt or innocence, as the Court has herein instructed you.

You are instructed that no inference or presumption of guilt or complicity can arise against the Defendant Natasha Gorin by reason of the fact that she is the wife of the Defendant Mikhail Gorin. You may consider such fact, along with the other facts proved to you upon the trial, but, as I have heretofore instructed you, each defendant is to be considered by you separately, and even though you find and believe that the Defendant Mikhail Gorin committed some of the acts or did some of the things charged in the indictment, the mere fact that Natasha Gorin is his wife cannot be considered by you as evidencing any knowledge on her part of such acts, and you are to draw no inference against her solely by reason of such relationship.

You are instructed that where the letters "U. S. S. R." are used in these instructions, or in the evidence in this case, that such letters are taken to mean an abbreviation for the Union of Soviet Socialist Republics.

You are instructed that regardless of the fact that you may not agree with the economic or political philosophy which is reputed to be that governing the affairs of the Union of Soviet Socialist Republics or any practices you may refer to as communism [474] and that you do not agree with or do hold in disfavor certain reputed practices of that Government and its officials, nevertheless your opinion or feelings in such regard must be entirely put aside in weighing the evidence in this case. I charge you that the defendants Gorin are entitled to a fair and impartial trial pursuant to the laws of the United States.

You are instructed that the defendant Hafis Salich caused to be served upon Henri deB. Claiborne a subpoena duces tecum requiring Mr. Claiborne to produce in this court certain reports and memoranda of the United States Naval Intelligence Service found in the files of that service in the San Pedro office. Likewise, the Government requested him to produce certain files. Upon the order of the Secretary of the Navy, or the Commandant of the Eleventh Naval District, or both, Lieutenant Claiborne declined to produce those documents upon the ground that their disclosure would be detrimental. to public interest and therefore privileged from disclosure in this court. The Court held that these documents were so privileged and refused to require Lieutenant Claiborne to produce them in evidence.

You are therefore instructed to disregard, in your deliberations, the fact that there has been no production in this court by either the Government or any defendant or any other reports of the United States Naval Intelligence Service than those mentioned in the indictment.

Natasha Gorin not being now involved in Counts I and II, this leaves for your consideration the question as to the guilt or innocence of Defendants Hafis Salich and Mikhail Nicholas Gorin under Counts I and II and the question, as to the guilt or innocence of all three defendants, Salich, Gorin and Mrs. Gorin, under Count III. The Court will now instruct you on the law specifically applicable to the crime charged in Count I, as defined in Section 31 of Title 50 United States Code, as follows:

[475]

"Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in

which any vessel, aircraft, arms. munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section 36 of this title; or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes or obtains, or attempts, or induces or aids another to copy, take, make or obtain, any sketch, photograph, photographic negative, biueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; \* \* \*"

States. On this count you are to consider only Defendants Salich and Mikhail Gorin.

The Court now instructs you that this crime, as defined in the statute and as charged in the indictment, has four distinct elements. All of these elements must be established by the Government beyond a reasonable doubt, as to each defendant, in order to permit a verdict of guilty on this count against such defendant. These four elements are as follows: [476]

- (1) The fact of taking or obtaining must be established;
- (2) There must be a purpose of obtaining in-

(3) There must be an intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of a foreign nation (U. S. S. R.);

(4) The information so taken must, in fact, re-

late to the national defense.

If you find that the Government has failed in its proof as to any one of these elements as to either of the defendants, you must acquit such defendant. On the other hand, if you find that all of the elements have been proven as to either or both defendants, it is then your duty to bring in a verdict of guilty as to such defendant or as to both such defendants.

The Court will now instruct you in detail as to

the law on each of these elements.

As to the first element: As to Salich, you must be convinced beyond a reasonable doubt that Hafis Salich did in fact, or that he attempted to copy, take or obtain information contained in the Naval Intelligence files, designated specifically by number in the indictment. As to Mikhail Gorin, you must be satisfied beyond a reasonable doubt that he copied, took, or obtained, or attempted or induced or aided another to copy, take, or obtain information contained in the Naval Intelligence files designated specifically by number in the indictment.

As to the second element: This element is a purpose of obtaining information respecting the na-

tional defense.

Such purpose must be proved beyond a reasonable doubt, as to each defendant. Before you can convict either or both of the defendants you must be satisfied beyond a reasonable doubt that such defendants or both of such defendants, had such purpose.

Such purpose may be subject to proof only [477] by circumstantial evidence—that is, by facts and acts from which it may be inferred. If the inference from proven facts and acts are as consistent with an innocent as with a guilty purpose, the point is not proved. But on the other hand, if they exclude every hypothesis, except that of guilt, the point is proved.

As to the third element: You are instructed that the law requires only that the Government prove either an intent or a reason to believe that the information was to be used either to the injury of the United States or to the advantage of the foreign nation—in this case, the Union of Soviet Socialist Republics. Hence, it will be sufficient to satisfy the requirements of the law if, for example, the Government proves to you beyond a reasonable doubt that both Salich and Gorin had reason to believe that the information disclosed was to be used to the advantage of Russia. In such case, you would be entitled to find that each defendant had the criminal intent specified in the statute.

The intent or purpose of a person is from its very nature a matter which has to be proved by circumstantial evidence. It is obvious that it is impossible to examine into the mind of the person while he is committing an alleged crime to ascertain just what was his intent. It is also true that if a person is about to commit a crime, or during the course of committing a crime, he avoids as far as possible revealing what his intentions are. The explanation which the defendant makes or what was his intent even though quite plausible is not conclusive as to just what was his intent.

This intent the Government must prove to you as a fact; but intent can be proved by facts and acts from which it may be inferred. If the inferences from proven facts and acts are as consistent with an innocent as with a guilty intent, the point is not proved. But on the other hand, if they exclude every hypothesis except that of guilt, the point is proved. In considering these [478] facts and acts, and the inferences drawn from them, you should consider whether or not there are any circumstances brought out in the evidence in this case which are consistent with some intent other than that this information be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. You should consider likewise the character of the information here in question-whether or not it is susceptible to use by the Union of Soviet Socialist Republics, and whether or not the Defendant Hafis Salich knew facts from which he concluded, or reasonably should have concluded, that this information could advantageously be used by the Union of Soviet Socialist Republics.

In this connection you are not to be governed solely by any explanations given by any defendant as to his intent, but you shall look to all of the evidence, circumstantial or otherwise, in arriving at what was the intent or purpose of said defendant as charged in the indictment. I further charge you that the defendant's interpretation of what he understood the law to be with respect to whether or not his acts were contrary to the statute is not conclusive. It is not what the defendant believed his acts amounted to so far as his guilt or innocence is concerned, but you are to consider all of the evidence and the law as I instruct you as to whether or not the acts of any defendant may or may not have violated the statutes governing the trial of this case.

An honest but mistaken belief on the part of any defendant that what he was doing was lawful, even though unethical, will not exonerate him, if in fact you find that the intent of such defendant was actually the unlawful one contemplated by the statute.

While it is a fundamental rule that men are presumed to intend the natural consequences of their acts, yet this presumption cannot prevail in the face of positive proof of a specific intent different from that required by the statute. When such evidence [479] is present, it devolves upon the Gov-

ernment to present affirmative evidence of the existence of the required unlawful intent.

You cannot surmise or speculate that the defendants intended and had reason to believe that the information was to be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. The intent or reason to believe that the information was to be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics is a fact charged which must be proven to the same extent as any other fact in the case.

Hence, if you find from the evidence that the Defendant Hafis Salich and Mikhail Gorin exchanged certain information relative to certain activities of Japanese in the United States or elsewhere, but that there was no intent and no reason to believe on the part of either of said defendants in so exchanging information that there would result an injury to the United States or advantage to the Union of Soviet Socialist Republics, then such acts and conduct on the part of said defendants did not constitute an offense as charged in the indictment.

As to the fourth element: You must be satisfied beyond a reasonable doubt that the information alleged to have been disclosed did in fact relate to the national defense, as that term will now be defined for you by the Court.

The statutes covering this type of case do not require to establish the crime of espionage that the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation. The document need not in fact be vitally important or actually injurious. The document or information must be, however, connected with or related to the national defense.

The mere fact that a report may refer to an individual or his activities does not mean that the report concerning such person [480] is connected with the national defense.

The mere fact that a report has been made by the United States Naval Intelligence, or one of its operatives, or commander, or any officer in charge thereof, concerning an individual or his activities, does not in and of itself mean that such report relates to the national defense.

The character of each report must be determined by considering the nature of the contents of that report, and whether or not the *contents* related to the national defense.

You are instructed that the term "national defense" includes all matters directly and reasonably connected with the defense of our nation against its enemies. The first lines of defense naturally are the men, the ships and the guns of the navy, the men, the planes and the guns of the air corps, and the men, forts and guns of the army. Behind these—but none the less necessary if the army and navy are to be kept in the field in wartime or well prepared in peacetime—are those places and things

which are essential to the storage of reserves, the inter-communication of armed forces, the transportation of war supplies, the reconditioning of war-worn materials and men, and the manufacture of

war supplies.

As you will note, the statute specifically mentions the places and things connected with or comprising the first line of defense when it mentions vessels, aircraft, works of defense, fort or battery and torpedo stations. You will note, also, that the statute specifically mentions by name certain other places or things relating to what we may call the secondary line of national defense. Thus some at least of the storage of reserves of men and materials is ordinarily done at naval stations, submarine bases, coaling stations, dock yards, arsenals and camps; all of which are specifically designated in the statute. The inter-communication of armed forces is carried on at telephone, telegraph, wireless [481] or signal stations, which the statute designates. The transportation of war supplies is accomplished by canals and railroads, similarly designated. The reconditioning of war-worn materials and men is accomplished, among other places, at naval yards and naval stations and the manufacturing of war supplies is accomplished at factories and mines. The general words, "building or office" are also mentioned.

You are instructed in the first place that for purposes of prosecution under these statutes, the

information, documents, plans, maps, etc., connected with these places or things must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation. Thus a map of a minefield would be a document directly affecting the usefulness of that mine-field, for if such map should fall into the hands of another country the ships of that power might easily pass through the minefield. Thus its usefulness as an instrument of national defense would be nullified as against that nation.

Similarly, even information that representatives or agents of some foreign power were in possession of such a map or plan or the map or plan of a shore-battery, might likewise directly concern the usefulness of that mine-field or that battery as an instrument of defense. Manifestly it might have to be rebuilt or changed. Such information might be essential to any successful naval strategy in that area during wartime:

You are instructed that in the second place the information, documents or notes must relate to those angles or phases of the instrumentality, place or thing which relates to the defense of our nation; thus if a place or thing has one use in peacetime and another use in wartime, you are to distinguish between information relating to the one or the other use. Thus an auto factory may make automobiles in time of peace and tanks in wartime.

Information relating to its output of automobiles might not be connected [482] with the national defense; information relating to its output of tanks might be related to the national defense.

Or, again, an air photo, from 2,000 feet altitude of terrain surrounding a battery might contain many things unimportant to the national defense, yet from a military standpoint it might be intimately connected with the efficiency of that battery, since from such photo an enemy might deduce the strong and the weak points in the position of such battery, the angle of fire of its guns, the size of its gun emplacement, and various other facts of military importance.

The information, document or note might relate to physical substances or instruments of warfare, either of our own forces or those of another power. This might include guns, gas masks, helmets, or any other part of army or navy equipment. Such information, document or note might conceivably concern a chemical whose peculiar properties might enable it to eat through the plates of a warship or destroy communication cables, or cables connecting mines with their moorings.

The information, document or note might also contain statistics or figures relating to some place intimately connected with the national defense. For example: The document might contain the exact draught of every vessel in the United States Navy. This information would enable the enemy

to know precisely into how shallow waters each vessel in our fleet might venture.

The information, document or note might also relate to the possession of such information by another nation and as such might also come within the possible scope of this statute. Thus a document narrating the fact that a certain foreign power has definite information as to the exact draught of our vessels might be vital to the military and naval defense of our country. For from the standpoint of military or naval strategy it might not only be dangerous to us for a foreign power to know our weaknesses and our [483] limitations, but it might also be dangerous to us when such a foreign power knows that we know that they know of our limitations.

You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions."

"The crime charged in count two is defined in Section 32 of Title 50, United States Code, as follows:

"Whoever, with intent or reason to believe that it is to be used to the injury of the United States, or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, \* \* \*"

On this count you are to consider only Defendants Salich and Mikhail Gorin. The Court now instructs you that this crime, as defined in the statute and as charged in the indictment, has four distinct elements. All of these elements must be established by [484] the Government beyond a reasonable doubt, as to each defendant, in order to permit a verdict of guilty on this count against such defendants.

These four elements are as follows:

First, the fact of disclosure must be proved;

Second, the disclosure must be made to representatives or citizens of a foreign nation (U/S. S. R.);

Third, the guilty intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of a foreign nation (U. S. S. R.) must be present

Fourth, the information so taken must, in fact actually relate to the national defense.

If you find that the Government has failed in its proof as to any one of these elements as to either of the defendants, you must acquit such defendant On the other hand, if you find that all of the elements have been proven as to either or both defendants, it is then your duty to bring in a verdict of guilty as to such defendant or defendants.

The Court will now instruct you in detail as to the law on each of these elements.

As to the first element: As to Salich, you must be convinced beyond a reasonable doubt that Haff Salich did, in fact, or attempted to, communicate deliver, or transmit information contained in the Naval Intelligence files designated specifically be number in the indictment.

As to Mikhail Gorin, you must be satisfied be yound a reasonable doubt that he communicated delivered, or transmitted to another, or that he aided, assisted, or induced Salich to communicate deliver, or transmit to Gorin or another or other information contained in the Naval Intelligence files designated specifically by number in the indictment. [485]

It is, of course, true, as a matter of law, that Mikhail Gorin could not communicate, deliver or transmit to himself notes, documents or information, nor attempt to do so. However, he could transmit them to another person, or he could aid or induce Salich to communicate, deliver or transmit such information to him, and if you find, as a fact, that Gorin did either one of these things, the requirements as to this element will be satisfied.

As to the second element: The Government must prove to you beyond a reasonable doubt that Defendant Mikhail Gorin was, on or about the 15th day of September 1937, and at all times since that date has been, a representative, or an officer, or an agent, or an employee, or a subject, or a citizen of the Union of Soviet Socialist Republics.

In this particular case it has been stipulated that the defendants, Mikhail Nicholas Gorin and Natasha Gorin, were at all times and are citizens of the Union of Soviet Socialist Republics.

If you find this fact not to have been established, you are to acquit both Salich and Mikhail Gorin

on the second count.

As to the third element: The question of intent—and the fourth element—the necessity of the information relating to the national defense—the law as already defined for you under count one is applicable here and you are to consider that the instruction as to intent and national defense which the Court has heretofore given you in connection

with count one is to govern your deliberations under count two on these elements.

Again, as to whether or no the information involved in this count concerned, regarded or was connected with the national defense is a question of fact solely for the determination of the jury, under these instructions.

Gentlemen, much testimony has been introduced in this case tending to prove statements and admissions made by the Defendant Salich during the course of conversations with, or in the presence [486] of, Mr. Dierst, Mr. Hanna, Mr. Stanley, Mr. Hanson, Commander Zacharias, or Commander Claiborne, and possibly other Government agents or other persons,

As to the Defendant Mikhail Gorin, who is jointly charged under Counts 1 and 2 of the indictment, you are instructed to ignore and to entirely disregard all and every part of such statements oral or written as testified to by witnesses other than Salich himself, in considering the guilt or innocence of the Defendant Gorin on those two counts, or either of them. I shall not go to the trouble nor take the time of the jury to specifically point out the exact statements made by Salich in these conversations. I feel sure that they are fresh in your memory. If not, they may be read to you upon your request through the Bailiff. The reason for this exclusion as to Counts 1 and 2 is that to entertain these statements would violate what is known as the hearsay rule of evidence.

The person who made the statement, that is, Salich, relayed second-hand by the witnesses on the stand, was not himself on the stand to be cross examined by counsel for the Defendants Gorin. However, please understand me, this hearsay rule does not apply to the testimony of the Defendant Salich, who later took the stand and whose testimony covered much of the same subject matter as was the subject matter of these statements. Salich was then subject to cross examination by counsel for the Defendants Gorin, and you may take into consideration his entire testimony in determining not only his, Salich's, guilt or innocence, but also that of the Defendants Gorin on each of these two counts.

Please understand, also, that these statements so revealed in conversations to Government agents were permitted to be introduced, and objection thereto, whenever made on behalf of the two Defendants Gorin, was overruled. The reason for this ruling of the Court was that the substance of these conversations may properly be considered by you in determining the guilt or innocence of Salich [487] and of Mikhail and Natasha Gorin under the conspiracy count or Count 3 of the indictment. This will be more fully indicated to you later in these instructions.

The Court will now instruct you as to the law particularly applicable to Count 3, which is drawn under Section 34 of Title 50 of the United States Code. That section reads as follows: "Conspiracy to violate preceding sections.

o"If two or more persons conspire to violate the provisions of Sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished \* \* \*"

You will note that the conspiracy charged in this indictment is alleged to be one in violation of Section 32 of the Act relating to disclosure of information. Count 3 does not and cannot charge any alleged conspiracy to obtain information in violation of Section 31 of the Act. The conspiracy here charged under Section 34 relates solely to an anlawful agreement to communicate, deliver or transmit information contrary to Section 32.

A conspiracy such as is here alleged is not an omnibus under which the prosecution can prove anything and everything. The charge or accusation is limited by the terms of the indictment. The indictment charges but one conspiracy, and no defendant can be convicted thereunder unless it can be shown beyond a reasonable doubt that he or she consciously became a member of that particular conspiracy. And when I use the word "he" in connection with the conspiracy, I shall also mean "she" wherever applicable. Further, the scope of the conspiracy must be gathered from the testimony and not from the averments of the indictment. The latter may limit the scope of the evidence, but cannot extend it.

A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful by criminal or [488] unlawful means. It is a partnership in criminal purposes. The gist of the crime is the confederation or combination of minds.

A conspiracy is constituted by an agreement; it is however, the result of the agreement and not the agreement itself. No formal agreement between the parties is essential to the formation of the conspiracy, for the agreement may be shown if there be concert of action, all the parties working together understandingly, with a single design for the accomplishments of a common purpose.

The purpose to be accomplished by the conspiracy may be either lawful or unlawful. If the purpose is lawful and is carried out by lawful means, then no offense is committed. If it is lawful and is carried out by criminal or unlawful means, then the statute is violated. On the other hand, if the purpose is unlawful and is carried out either by lawful or unlawful means, the statute is violated. The purpose of the conspiracy may be continuous, that is, it may contemplate commission of several offenses, or overt acts. The agreement forming the basis of the conspiracy may be a continuing one, and the conspiracy itself may be a continuing one, contemplating a whole series of unlawful acts, an unlawful course of conduct extending over a con-

to distinguish between an unlawful conspiracy and an agreement which itself by statute is made a substantive offense. An example of this latter kind of offense would be the sale of liquor without proper revenue stamps, contrary to the statutes of the United States. Such a sale is in effect a contract between a buyer and a seller, and the contract or sale itself has been made a substantive offense. The law declares that there cannot be an unlawful conspiracy to make such an agreement where the only parties to the conspiracy are the buyer and the seller, since obviously this would make the same agreement or compact into two offenses.

But there may be a conspiracy where there are other persons [489] than the buyer and seller involved, as where A, B, and C conspire that A will buy liquor from B to give it to C. In such case the conspiracy is obviously much larger than the mere agreement of sale between A and B. It includes other parties and other acts than the mere compact or sale between A and B.

Furthermore, a conspiracy may be formed between A and B to effect a large number of sales. It may be a continuing conspiracy contemplating the formation of many separate unlawful contracts or sales, and the individual terms of these separate contracts or sales may be left to be determined at the time each sale is effected. The agreement of conspiracy, however, is the broad understanding between A and B looking to the performance of many unlawful acts. In such a case each unlawful sale of liquor might be a substantive crime and the conspiracy itself might be a punishable crime as well.

The crime is completed when any one overt act to effect the object of the conspiracy is done by at least one of the conspirators. An overt act is something apart from the conspiracy itself, and is an act to effect the object of the conspiracy. It need be neither a criminal act, nor the very crime that is the object of the conspiracy. It must, however, accompany or follow the agreement, and must be done in furtherance of the object of it.

All of the conspirators need not join in the commission of an overt act, for, if one of the conspirators commits an overt act, it becomes the act of all the conspirators.

The conspiracy alone does not constitute the offense, as I have heretofore indicated. It needs the addition of the overt act; such act is something more therefore than evidence of a conspiracy. It constitutes the execution or part execution of the conspiracy and all incur guilt by it, or further complete their guilt by it, consummating a crime cognizable by our courts.

This indictment charges that certain overt acts were committed [490] by some one or other of these defendants and of the alleged joint conspirators, in pursuance of and in execution of and to effect the object of such wilful and unlawful conspiracy.

It is not necessary that all of the alleged overt acts be proved. It will be sufficient to complete the offense if the proof establishes one of the alleged overt acts performed by any one of the conspirators while the conspiracy was in progress and after each of the alleged conspirators became a party to the unlawful agreement. Mere commission of any or all of the overt acts charged in the indictment will not be enough to warrant a verdict of guilty against any or all of the defendants on Count 3 unless you find there was an unlawful agreement, and that one or more of those acts was done by one or more of the conspirators, in furtherance of the conspiracy, and during its continuance.

The conspiracy charge in Count 3 must have as its basis an unlawful agreement to violate Section 32. Consequently the terms of the agreement must include a common purpose on the part of the conspirators to violate each of the requisite elements described to you as comprising the crime charged in Section 32. The conspiracy therefore must contemplate (briefly stated), (1) a disclosure, (2) to Russia or a citizen or representative thereof; (3) with the guilty intent heretofore explained to you; (4) of information relating to the national defense. I have purposely abbreviated those, as I had explained them fully to you before.

The Court has already instructed you as to these separate elements and assumes that you have them well in mind without the necessity of repeating them at length here. What has been said by the Court, however, heretofore as to those four elements is to be considered by you as governing in your deliberations on this conspiracy count.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an express or [491] formal agreement for the unlawful venture or scheme, or that they should directly, by words or in writing, state, between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, when an unlawful end is sought to be effected, and two or more persons, actuated by The common purpose of accomplishing that end, work together in any way in furtherance of the inlawful scheme, every one of said persons becomes a member of the conspiracy. The success or failure of the conspiracy is immaterial, but before the defendants may be found guilty of the charge it must appear beyond a reasonable doubt that a conspiracy was formed as alleged in the indictment, and that the defendants were active parties thereto.

Each party must be actuated by an intent to promote the common design. If persons pursue by their acts the same unlawful object, one per-

forming one act, and a second another act, all with a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a conspiracy to effect that object Cooperation in some form must be shown. There must be intentional participation in the transaction with a view and purpose to further the common design. / And if a person, understanding the unlawful character of a transaction, encourages, advises, or in any manner, with a purpose to forward the enterprise or scheme, assists in its prosecution, he becomes a conspirator. And so a new party, coming into a conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as to the acts done afterwards. Joint assent and joint participa- [492] tion in the conspiracy may be found, like any other fact, as an inference from facts proved.

Where the existence of a criminal conspiracy has been shown, every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted plan and in furtherance of the common object, is considered the act and declaration of all of the conspirators and is evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design, or by the parties abandoning the same, evidence of acts.

or declarations thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declaration or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

A considerable part of the testimony before you covers statements made by the defendant Salich to agents for the Government, as I have heretofore explained in connection with Counts 1 and 2. This evidence is proper evidence in law and has been admitted for your consideration by this Court in connection with this conspiracy count and as to each and all of the alleged conspirators.

If you find that, as a matter of fact, there was a conspiracy between two or more of the defendants, then the statements of Salich or of either Mr. or Mrs. Gorin, made during the course of the conspiracy, are proper evidence against all of those who engaged in the conspiracy. The theory is that conspirators are, in effect, partners in crime; so that a statement or an admission or an acknowledgment by one of the conspirators, made during the existence of the conspiracy is binding upon and is to be considered by you as to all of the alleged conspirators. Conspiracy cases furnish an exception to the well known hearsay rule of evidence, which I have previously explained to you. Proof of a conspiracy may be by [493] circumstantial evidence, oftentimes by overt acts alone.

As heretofore indicated, we have the two kinds of evidence, the direct evidence and the indirect or circumstantial evidence.

I might repeat that definition of indirect evidence, or circumstantial evidence, as that evidence which tends to establish the fact in dispute by proving another and which, though true, does not of itself exclusively establish that fact but which affords an inference or presumption of its existence. Such evidence may consist of statements made by a defendant, plans laid for the commission of a crime—in short any acts, declarations or circumstances admitted in evidence tending to establish the offense charged, and to connect the defendant with its commission.

Where circumstantial evidence is relied upon to establish the conspiracy or any other essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and if it appears to you as reasonable men that, even though there is no direct evidence of the actual participation in the alleged offenses by the defendants, or either of them, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable doubt, show that the defendants, or some of them, were

parties to the conspiracy as charged, then you should make the deduction and find accordingly.

But you are not permitted to draw an inference from an inference, nor heap deduction onto deduction. You are permitted to draw inferences and deductions from facts, or what you find to be the facts. Beyond that, you are not permitted to go.

It is not necessary that it be shown that any person concerned in the alleged conspiracy profited by the things which he did, but if any of the defendants, with knowledge that the law was designed [494] to be violated in the particular manner charged in the indictment, aided in any way by affirmative action in the accomplishment of the unlawful act they would be guilty.

If you find that there was a conspiracy, and in the furtherance thereof an overt act took place, you are also to determine as to when the conspiracy commenced and for how long it continued.

The indictment charges that the conspiracy came into existence on a certain date and that it continued until the date of the finding of the indictment, and that date was January 11, 1939. However in this connection, while the indictment with respect to the conspiracy count charges that the conspiracy occurred even before the latter part of the year 1935, it is the position of the Government, as stated in open court, that in fact no contention is made that the conspiracy started prior to

some time during the latter part of the year 1937. It is for you to determine, from all of the evidence, if you find that, in fact, there was a conspiracy between the defendants, as to when it started and for how long it continued.

It is for you to say whether or not this conspiracy continued up to the time of the arrests of the various defendants, or any of them. The Defendant Salich was arrested on or about December 12, 1938. The Defendant Mr. Gorin was arrested on or about December 12, 1938. The Defendant Mrs. Gorin was arrested on or about January 11, 1939.

One who aids or abets the formation of a conspiracy or facilitates the execution of a conspiracy is a conspirator equally with those who are the principals in the conspiracy. Hence, if you find that any one of the defendants, knowing that a conspiracy was in existence did certain acts which would make it easier for the conspiracy to continue and be effected, that defendant, so facilitating the carrying out of the conspiracy, would be equally guilty as a conspirator.

The net result of this charge of the indictment is, so far as [495] the conspiracy count, Count 3, is concerned, that these defendants are said to have had an unlawful common purpose and design to transmit to the Union of Soviet Socialist Republics or a citizen or subject thereof certain information relating to the national defense of the United States and that this common design and purpose

was accompanied by an intention or reason to believe, upon the part of each of the defendants that the information so to be transmitted would be used either to the injury of the United States or to the advantage of a foreign government, namely, the Union of Soviet Socialist Republics.

You are to bear in mind that it is not necessary for the Government to prove here that any of these items of information actually reached the Union of Soviet Socialist Republics.

All that is required in proof is that one conspirator, after the conspiracy to do the unlawful thing is formed, does some cast during the course of the conspiracy that is calculated to effect the object of the conspiracy. At that point all the conspirators are guilty, even though the ultimate purpose or objective of the conspiracy is never achieved.

In this trial both sides have introduced evidence having to do with the question as to whether a matter connected with the national defense be of a confidential, secret, or restricted nature. In reaching your verdict, you should bear in mind that under the statutes here involved you need not greatly concern yourselves as to whether information falling within the purview of this indictment and which has been introduced in evidence before you, was secret, confidential or even restricted, except possibly as an element to be considered by you in determining the intent of any defendant or defendants under the statutes here involved.

If, in fact, there was here a conspiracy to transmit to the Union of Soviet Socialist Republics or to one or more of its representatives, information relating to the national defense of the United [496] States, and if such transmittal was to be accomplished with the intention upon the part of the conspirators that the information was to be used either to the injury of the United States or to the advantage of a foreign nation, and if one or more persons who was at that time a party to the conspiracy committed an overt act during the course of the conspiracy for the purpose of effectuating the object of the conspiracy, each and every person who belonged to the conspiracy was guilty of a crime against the United States."

"Gentlemen of the jury, the Court instructed you this morning at some length as to the requirement that the information taken or disclosed, or which was subject of a conspiracy to disclose, relates to the national defense.

At request of counsel, the Court now wishes to once again direct your attention to that portion of its charge.

The Court fears that it may inadvertently have conveyed an incorrect impression to you, that before you can reach a verdict of guilty you must find, as a fact, that all of the information contained in all of the reports specifically mentioned in the indictment related to the national defense. Such, of course, is not the law, nor was it the Court's intention to so instruct you, or did the Court, as a matter of fact, so instruct you.

If the Government has proved to you beyond a reasonable doubt that just one or more of these reports contained information relating to the national defense, as that phase has heretofore been defined to you, and that any or all of the defendants concerned with that information were guilty beyond a reasonable doubt as to all of the other elements composing any count, it will then be your duty to return a verdict of guilty to such defendant or defendants as to such count or counts.

You are instructed not to be prejudiced for or against the defendants, or any of them, or for or against the Government, be- [497] cause there were reports mentioned in the indictment by number which have not been introduced in evidence. You are to treat the matter as though those particular numbers did not appear in the indictment.

Gentlemen, in the instructions given you this morning there was a reference to the fact that a subpoena duces tecum was issued on behalf of one of the defendants, and a request was made on behalf of the Government for certain files from the office of the Naval Intelligence Service. You are now instructed, at the request of all counsel, to entirely ignore and dismiss from your minds that instruction. Under no circumstances did the Court intend to infer that there were any documents in the files of the Naval Intelligence not produced in court, which might in any way affect the subject matter of this proceeding or be or not be connected with the national defense.

Whether or not there are any such documents, the Court has no knowledge, and there is nothing before the Court to prove or disprove that fact.

You are instructed to disregard in your deliberations the fact that there has been no production in this court by either the Government or any of the defendants of any other reports of the United States Naval Intelligence Service than those mentioned in the indictment.

Under the Federal practice, it now becomes the obligation of counsel to object to and take exception to any of the instructions which the Court has given to you, and to make any suggestions that such counsel may have for additional instructions."

Mr. Stone: May it please the Court, Lexcept to the definition of national defense as contained in your Honor's instructions this morning; and except further to the failure of the [498] Court to give Instruction No. 10 requested on behalf of the Defendant Hafis Salic.

The Court: The exception may be made a matter of record.

Mr. Pacht: If the Court please, I desire, first, to except to the instruction which your Honor just gave to the jury, that it is sufficient to convict if any one or more of the reports offered in evidence deal with the national defense.

The Court: That wasn't the instruction. You will have to be more specific in order to make the exception any good. Taken at this late date, it would be meaningless. The Court connected it up

with the entire instruction, and stated that as to those reports it was not necessary that all of those reports deal with the national defense; that one or more of the reports could deal with the national defense, and that the jury in their deliberations, tying it in with the entire instructions, should so consider it.

Now, if your point—if it is your position that all of the instructions had to do with the national defense in order that the defendants should be guilty, you must be specific. If that is your point, that may be registered.

Mr. Pacht: My point is, if the Court please, under the statute, the jury cannot determine whether any of these reports deal with the national defense.

The Court: That is an entirely different question.

Mr. Pacht: And that none of them do, as a matter of law, deal with the national defense.

The Court: That is a different point.

Your point there is that the jury has no privilege in determining whether or no any of these reports have to do with the national defense, that that is a matter for the Court and not [499] for the jury, as a matter of law.

Mr. Pacht: Yes.

The Court: Yes. That exception may be allowed.

Mr. Pacht: We except further to the Court's instruction this morning that the statement or statements given by the Defendant Salich to the

Agent of the Federal Bureau of Investigation is binding upon either the Defendant Natasha Gorin or the Defendant Mikhail Gorin, upon the ground that the conspiracy, according to the evidence introduced in court here, had prior to that time terminated.

The Court: That exception may be allowed.

Mr. Pacht: We except to the Court's charge given this morning that Salich's belief, honestly entertained, as to his view of the law that the information which he gave to Corin was not injurious to the United States or of advantage to a foreign power, is of no avail to him as a defense in this case, but that he may be convicted nevertheless. We except to that charge. I am merely referring to the subject matter; I am not pretending to give the exact phraseology.

The Court: You except to the form of the instruction?

Mr. Pacht: Yes.

The Court: Very well. The exception will be entertained.

Mr. Pacht: We except to the charge of the Court given this morning that it is sufficient if the defendants had reason to believe that the information was to be given to the U. S. S. R., and [500] we ask the Court to charge before this jury may convict the defendants, or any of them, they must find that the defendants had a specific intent to injure the United States, or a specific intent that the transmittal or obtaining of the information was to be of advantage to the U. S. S. R.

The Court: The point there being that if you wish an instruction, it must be a specific intent?

Mr. Pacht: Yes, your Honor.

The Court: The reason to believe, as defined by the Court, is not sufficient?

Mr. Pacht: Yes, your Honor.,

The Court: The exception will be entertained,

and the request denied.

Mr. Pacht: I ask your Honor to instruct the jury—strike that. In addition to the instructions which we have asked the Court to give, and which have been filed already, and specifically at this time we ask the Court to give Instruction No. G-29, to the effect that, as defined in the statute in question in this case, the national defense relates solely and is limited to the places and things designated in Subdivision (a) of Section 31, Title 50 of the United States Code, to-wit, any vessel, aircraft, and so forth.

The Court: That exception will be noted, and

the requested instruction declined.

Mr. Pacht: We ask the Court to give the jury Instruction No. G-37, heretofore submitted to the Court, in substance, to this effect: that unless the jury find beyond a reasonable doubt from the evidence in the case that the defendants Gorin took, [501] copied, made, obtained or attempted to induce another to make a copy, sketch, and so forth—

The Court (Interrupting): I am familiar with that.

Mr. Pacht: G-379

The Court: I have it before me.

Mr. Pacht: With the intent that the same be to the injury of the United States or of advantage to a foreign power, that they are not guilty of any offense, and the jury should acquit them.

The Court: The request will be denied; exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as more fully set forth in our requested instruction heretofore submitted, No. G-39, that the evidence in this case discloses that many of the reports enumerated in the indictment deal with the arrival and departure of Japanese commercial operators, naval officers and Japanese businessmen, and other reports that deal with activities of Japanese fishing boats in Southern California, and still others that deal with the political and economic opinions of various and sundry persons, and still others deal with the conduct of certain Japanese, and so forth.

The Court: You mean the same form as submitted?

Mr. Pacht: Exactly.

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as submitted in Instruction No. BB, heretofore submitted to the Court.

The Court: The request will be denied; exception allowed.

Mr. Pacht: That is as to our requested instruc-

The Court: Yes. [502]

Mr. Pacht: Your Honor, I specifically except to your Honor's instruction to the jury concerning the subject matter of national defense, the definition of the term national defense; and I further except to it upon the ground that it violates Sections 5 and 6 of the United States Constitution—or, rather, the amendments to the Constitution—and that it submits for the determination of the jury and the interpretation of the jury, a law or an enlargement of it.

The Court: The exception will be permitted.

Mr. Pacht: And, in that connection, we specifically request the Court to give the instruction relating to national defense and the definition of it, as set forth in our requested Instructions G-29, G-37, G-39, CC — which I haven't yet called to your Honor's attention.

The Court: The request will be dealed, and an

exception allowed.

Mr. Pacht: I ask the Court to give the jury Instruction No. GG, requested by us, in which there is set forth certain numbered reports. They do not relate to the national defense.

The Court: The request will be received, denied,

and an exception allowed.

Mr. Pacht: I ask the Court to instruct the jury as set forth in our requested Instruction FF-1.

The Court: The request will be denied, and an exception allowed. [503]

Mr. Pacht: I ask your Honor to instruct the jury as heretofore requested in our submitted In-

struction No. FF, which I will, for the present purpose, designate as FF-2.

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as per the instruction submitted by us numbered AA, concerning the subject of conspiracy, and that it refers to the documents and papers and objects referred to in Subdivision (a) of Section 31.

The Court: The offer will be declined, and an exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as per the instruction heretofore submitted to the Court marked K.

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask the Court to instruct the jury in accordance with the instruction heretofore submitted to the Court marked T, defining the terms "injury" and "advantage."

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask the Court to instruct the jury as per the submitted instruction G-41.

The Court: It will be declined; exception allowed. [504]

Mr. Pacht: I ask the Court to instruct the jury as requested by us in instruction heretofore submitted to the Court marked G-19, concerning the defendants being entitled to the individual opinion of each juror.

The Court: That will be declined. Exception

Mr. Pacht: I take it, of course, as your Honor has indicated, that my failure to state at large and in detail the subject matter of each requested instruction was not necessary, and that we may have the exception nevertheless?

The Court: As the Court has those instructions in front of him, it was unnecessary for you to go into detail, and you have the exception just the

same.

Mr. Pacht: Now, may I ask for another matter, vour Honor?

In making the request for these specific instructions, which I have just made, and which your Honor has passed upon, I do not intend, and I do not mean, to waive our right to have each and all of the instructions which have heretofore been submitted to the Court and which have not been given, and that we may have an exception to each one of those that have not been given.

The Court: Well, I can't allow you that in those general terms. They are all filed, and they have been requested, and I don't think you need an exception as to those.

The only thing I can give you an exception to is as to particular matters that you bring up specifically and bring to the Court's attention.

Mr. Pacht: I didn't want to be understood, by making these specific requests, that I waived any of the others which have heretofore been submitted.

The Court: You are protecting your position so far as you can. [505]

Mr. Stone: May I make one more exception to your charge on intent as given this morning, and to your Honor's failure to give instruction No. 12, requested in behalf of the Defendant Hafis Salich!

The Court: You may have the exception.

Whereupon the jury retired to deliberate upon their verdict.

Thereafter, at 4:50 o'clock p. m., on March 10, 1939, the jury returned into said court with a verdict as follows:

We, the jury in the above-entitled case, find the defendant, Hafis Salich, guilty as charged in the first count of the indictment; guilty as charged in the second count of the indictment; guilty as charged in the third count of the indictment.

We find the defendant, Mikhail Nicholas Gorin, guilty as charged in the first count of the indictment; guilty as charged in the second count of the indictment; guilty as charged in the third count of the indictment.

We find the defendant, Natasha Gorin, not guilty as charged in the first count of the indictment; not guilty as charged in the second count of the indictment; not guilty as charged in the third count of the indictment.

#### FRED M. COX.

Foreman of the jury.

Los Angeles, California; March 10, 1939"

[506]

That thereafter the defendant Gorin filed and presented due and timely motions in arrest of judgment and for a new trial as follows:

[Title of District Court and Cause.]

## "MOTION OF DEFENDANT MIKHAIL NICH-OLAS GORIN IN ARREST OF JUDGMENT

Now comes the defendant Mikhail Nicholas Gorin and moves said court that the verdict of guilty returned against him by jury in this court upon the 10th day of March, 1939, be arrested as to each count of said indictment upon which said defendant was found guilty, and that no judgment and sentence be imposed thereon for the following reasons:

- 1. That the indictment upon which said defendant was tried and convicted does not, and neither does any count thereof, state facts sufficient to constitute a crime against the United States.
- 2. That Count One of said indictment does not state facts sufficient to constitute a crime against the United States.
- 3. That Count Two of said indictment does not state facts sufficient to constitute a crime against the United States.
- 4. That Count Three of said indictment does not state facts sufficient to constitute a crime against the United States.

Dated: March 13, 1939.

PACHT, PELTON, WARNE & BLACK,

By ISAAC PACHT, By CLORE WARNE,

> Attorneys for defendant Mikhail Nicholas Gorin."

That thereafter, to wit on the 20th day of March 1939, said motion came on for hearing, and was by the Court denied and an Exception allowed.

[Title of District Court and Cause.] [507]
"MOTION OF DEFENDANT MIKHAIL NICH

OLAS GORIN FOR A NEW TRIAL

Comes now the defendant, Mikhail Nichola Gorin, and moves the court to grant him a new trial in the above entitled action for the following reasons, to wit:

- 1. Because the verdict of the jury is contrary to the law and the evidence.
- 2. That the court erred in its charge to the jury, in that it presented to the jury a question of law for its defermination, and left to the jury the construction and interpretation of a criminal statute, all in violation of law and the rights of said defendant given and granted to him by the Fifth Sixth and Fourteenth Amendments of the Constitution of the United States.

Dated: March 13, 1939.

## PACHT, PELTON, WARNE & BLACK

By ISAAC PACHT,
By CLORE WARNE,

Attorneys for Defendant Mikhail Nicholas Gorin."

That said motion was made and presented after the denial of said motion in arrest of judgment, and was by the Court denied and an exception allowed. [508]

That thereafter the defendant Salich filed and presented Motion for Judgment Notwithstanding the Verdict or for a New Trial, as follows:

### [Title of District Court and Cause.]

- "MOTION FOR JUDGMENT NOTWITH-STANDING THE VERDICT OR FOR A NEW TRIAL
- Defendant Hafis Salich respectfully moves this Honorable Court for judgment notwithstanding the verdict, or in the alternative, for a new trial, upon each and every count of the indictment and upon the following counts and each of them:

#### First Count

(1) The First Count of the indictment fails to state facts sufficient to constitute a penal offense

by the defendant, Hafis Salich, against the United States.

- (2) The evidence introduced on behalf of the Government on the First Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.
- (3) The verdict is against the weight of the evidence.
- (4) The evidence introduced by the Government fails to show that the information obtained concerns or affects the national defense.
- (5) The evidence fails to show that the defendant Hafis Salich obtained the said information with intent or reason to believe that it was to be use to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (6) The evidence fails to show that the defendant Hafis Salich obtained the said information with the purpose of obtaining information affecting the national defense.
- (7) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.
- (8) The Court erred in its definition of the term "national defense" in the instructions given to the jury. [509]
- (9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.
- (10) The Court erred in admitting in evidence Government's Exhibit 5a.

(11) The Court erred in admitting in evidence Government's Exhibit 5b.

(12) The Court erred in admitting in evidence

Government's Exhibit 5c.

(13) The Court erred in admitting in evidence Government's Exhibit 5d.

(14) The Court erred in admitting in evidence

Government's Exhibit 5e.

(15) The Court erred in admitting in evidence Government's Exhibit 5f.

(16) The Court erred in admitting in evidence

Government's Exhibit 5g.

(17) The Court erred in admitting in evidence Government's Exhibit 5h.

(18) The Court erred in admitting in evidence

Government's Exhibit 5i.

(19) The Court erred in admitting in evidence Government's Exhibit 5j.

(20) The Court erred in admitting in evidence

Government's Exhibit 5k.

(21) The Court erred in admitting in evidence Government's Exhibit 51.

(22) The Court erred in admitting in evidence Government's Exhibit 5m.

(23) The Court erred in admitting in evidence

Government's Exhibit 6a.

(24) The Court erred in admitting in evidence Government's Exhibit 6b. [510]

(25) The Court erred in admitting in evidence

Government's Exhibit 6c.

- (26) The Court erred in admitting in evidence Government's Exhibit 6d.
- (27). The Court erred in admitting in evidence Government's Exhibit 6e.
- (28) The Court erred in admitting in evidence Government's Exhibit 67.
- (29) The Court erred in admitting in evidence Government's Exhibit 6g.
- (30) The Court erred in admitting in evidence Government's Exhibit 6h.
- (31) The Court erred in admitting in evidence Government's Exhibit 6i.
- (32) The Court erred in admitting in evidence Government's Exhibit 6j.
- (33) The Court erred in admitting in evidence Government's Exhibit 6k.
- (34) The Court erred in admitting in evidence Government's Exhibit 61.
- (35) The Court erred in admitting in evidence Government's Exhibit 6m.
- (36) The Court erred in admitting in evidence Government's Exhibit 6n.
- (37). The Court erred in admitting in evidence Government's Exhibit 6o.
- (38) The Court erred in admitting in evidence Government's Exhibit 6p.
- (39) The Court erred in admitting in evidence Government's Exhibit 6q.
- Government's Exhibit 6r. [511]

(41) The Court erred in admitting in evidence Government's Exhibit 6s.

(42) The Court erred in admitting in evidence

Government's Exhibit 6t.

(43) The Court erred in admitting in evidence (
Government's Exhibit 6u.

(44) The Court erred in admitting in evidence

Government's Exhibit 6v.

(45) The Court erred in admitting in evidence Government's Exhibit 6w.

(46) The Court erred in admitting in evidence-Government's Exhibit 6x.

(47) The Court erred in admitting in evidence Government's Exhibit 6y.

(48) The Court erred in admitting in evidence

Government's Exhibit 6z.

(49) The Court erred in admitting in evidence Government's Exhibit 6aa.

(50) The Court erred in admitting in evidence

Government's Exhibit 6bb.

(51) The Court erred in admitting in evidence Government's Exhibit 6cc.

(52) The Court erred in admitting in evidence

Government's Exhibit 6dd.

(53) The Court erred in declining to give Instantion No. X requested on behalf of Hafis Salich.

(54) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.

(55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.

- (56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri De B. [512] Claiborne.
- (57) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

#### Second Count

- (1) The Second Count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.
- (2) The evidence introduced on behalf of the Government on The Second Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.
- (3) The verdict is against the weight of the evidence.
- (4) The evidence introduced by the Government fails to show that the information communicated and transmitted concerns or affects the national defense.
- (5) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (6) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with the purpose of communi-

cating and transmitting information affecting the national defense.

(7) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.

(8) The Court erred in its definition of the term "national defense" in the instructions given to the jury.

(9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.

(10) The Court erred in admitting in evidence Government's Exhibit 5a. [513]

(11) The Court erred in admitting in evidence Government's Exhibit 5b.

(12) The Court erred in admitting in evidence Government's Exhibit 5c.

(13) The Court erred in admitting in evidence Government's Exhibit 5d.

(14) The Court erred in admitting in evidence Government's Exhibit 5e.

(15) The Court erred in admitting in evidence Government's Exhibit 5f.

(16) The Court erred in admitting in evidence Government's Exhibit 5g.

(17) The Court erred in admitting in evidence Government's Exhibit 5h.

(18) The Court erred in admitting in evidence Government's Exhibit 5i.

(19) The Court erred in admitting in evidence Government's Exhibit 5j.

- (20) The Court erred in admitting in evidence Government's Exhibit 5k.
- (21) The Court erred in admitting in evidence Government's Exhibit 51.
- (22) The Court erred in admitting in evidence Government's Exhibit 5m.
- (23) The Court erred in admitting in evidence Government's Exhibit 6a.
- (24) The Court erred in admitting in evidence Government's Exhibit 6b.
- (25) The Court erred in admitting in evidence Government's Exhibit 6c.
- (26) The Court erred in admitting in evidence Government's Exhibit 6d. [514]
- (27) The Court erred in admitting in evidence Government's Exhibit 6e.
- (28) The Court erred in admitting in evidence Government's Exhibit 6f.
- (29) The Court erred in admitting in evidence Government's Exhibit 6g.
- (30) The Court erred in admitting in evidence Government's Exhibit 6h.
- (31) The Court erred in admitting in evidence Government's Exhibit 6i.
- (32) The Court erred in admitting in evidence Government's Exhibit 6j.
- (33) The Court erred in admitting in evidence Government's Exhibit 6k.
- (34) The Court erred in admitting in evidence Government's Exhibit 61.

(35) The Court erred in admitting in evidence Government's Exhibit 6m.

(36) The Court erred in admitting in evidence

Government's Exhibit 6n.

(37) The Court erred in admitting in evidence Government's Exhibit 60.

(38) The Court erred in admitting in evidence Government's Exhibit 6p.

(39) The Court erred in admitting in evidence

Government's Exhibit 6q..

(40) The Court erred in admitting in evidence Government's Exhibit 6r.

(41) The Court erred in admitting in evidence Government's Exhibit 6s.

(42) The Court erred in admitting in evidence Government's Exhibit 6t. [515]

(43) The Court erred in admitting in evidence Government's Exhibit 6u.

(44) The Court erred in admitting in evidence Government's Exhibit 6v.

(45) The Court erred in admitting in evidence Government's Exhibit 6w.

(46) The Court erred in admitting in evidence Government's Exhibit 6x.

(47) The Court erred in admitting in evidence

Government's Exhibit 6y.

(48) The Court erred in admitting in evidence Government's Exhibit 6z.

(49) The Court erred in admitting in evidence Government's Exhibit 6aa.

- (50) The Court erred in admitting in evidence Government's Exhibit 6bb.
- (51) The Court erred in admitting in evidence Government's Exhibit 6cc.
- (52) The Court erred in admitting in evidence Government's Exhibit 6dd.
- (53) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich.
- (54) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.
- (55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.
- (56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri De B. Claiborne.
- (57) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury. [516]

#### Third Count

- (1) The Third Count of the indictment failed to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.
  - (2) The evidence introduced on behalf of the Government on the Third count of the indictment

is insufficient to support a conviction of the defendant Hafis Salich.

- (3) The verdict is against the weight of the evidence.
- (4) The information introduced by the Government fails to show that the information conspired to be transmitted concerns or affects the national defense.
- (5) The evidence fails to show that the defendant Hafis Salich conspired to transmit the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (6) The Court erred in denying the motion for directed verdict presented on behalf of defendant. Haffs Salich.
- (7) The Court erred in its definition of the term "national defense" in the instructions given to the jury.
- (8) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.
  - (9) The Court erred in admitting in evidence Government's Exhibit 5a.
- (10) The Court erred in admitting in evidence Government's Exhibit 5b.
- (11) The Court erred in admitting in evidence Government's Exhibit 5c.

- (12) The Court erred in admitting in evidence Government's Exhibit 5d.
- (13) The Court erred in admitting in evidence Government's Exhibit 5e.
- (14) The Court erred in admitting in evidence Government's [517] Exhibit 5f.
- (15) The Court erred in admitting in evidence Government's Exhibit 5g.
- (16) The Court erred in admitting in evidence Government's Exhibit 5h.
- (47) The Court erred in admitting in evidence Government's Exhibit 5i.
- (18) The Court erred in admitting in evidence Government's Exhibit 5j.
- (19) The Court erred in admitting in evidence Government's Exhibit 5k.
- (20) The Court erred in admitting in evidence Government's Exhibit 51.
- (21) The Court erred in admitting in evidence Government's Exhibit 5m.
- (22) The Court erred in admitting in evidence Government's Exhibit 6a.
- (23) The Court erred in admitting in evidence Government's Exhibit 6b.
- (24) The Court erred in admitting in evidence Government's Exhibit 6c.
- (25) The Court erred in admitting in evidence Government's Exhibit 6d.
- · (26) The Court erred in admitting in evidence Government's Exhibit 6e.
- (27) The Court erred in admitting in evidence Government's Exhibit 6f.

(28) The Court erred in admitting in evidence Government's Exhibit 6g.

(29) The Court erred in admitting in evidence Government's Exhibit 6h.

(30) The Court erred in admitting in evidence Government's [518] Exhibit 6i.

(31) The Court erred in admitting in evidence Government's Exhibit 6j.

(32) The Court erred in admitting in evidence Government's Exhibit 6k.

(33) The Court erred in admitting in evidence Government's Exhibit 61.

(34) The Court erred in admitting in evidence Government's Exhibit 6m.

(35) The Court erred in admitting in evidence Government's Exhibit 6n.

(36) The Court erred in admitting in evidence Government's Exhibit 60.

(37) The Court erred in admitting in evidence Government's Exhibit 6p.

(38) The Court erred in admitting in evidence Government's Exhibit 6q.

(39) The Court erred in admitting in evidence Government's Exhibit 6r.

(40) The Court erred in admitting in evidence Government's Exhibit 6s.

(41) The Court erred in admitting in evidence Government's Exhibit 6t.

(42) The Court erred in admitting in evidence Government's Exhibit 6u.

- (43) The Court erred in admitting in evidence. Government's Exhibit 6v.
- (44) The Court erred in admitting in evidence Government's Exhibit 6w.
- (45) The Court erred in admitting in evidence Government's Exhibit 6x.
- (46) The Court erred in admitting in evidence Government's [519] Exhibit 6y.
- (47) The Court erred in admitting in evidence Government's Exhibit 6z.
- (48) The Court erred in admitting in evidence Government's Exhibit 6aa.
- (49) The Court erred in admitting in evidence Government's Exhibit 6bb.
- (50) The Court erred in admitting in evidence Government's Exhibit 6cc.
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- (55) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri De B. Claiborne.

(56) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

WILLARD J. STONE, Jr.
Attorney for Hafis Salich"

That thereafter, towit, on the 20th day of March, 1939, said Motion came on for hearing and was by the Court denied and an exception allowed. [520]

Thereafter sentence and judgment of the Court was imposed, rendered and entered, and thereafter, notices of appeal were filed on behalf of each of said defendants Mikhail Nicholas Gorin and Hafis Salich.

Thereafter the following orders were duly made and entered by the Court:

[Title of District Court and Cause.]

"ORDER EXTENDING TIME WITHIN WHICH TO PREPARE, SETTLE AND FILE BILL OF EXCEPTIONS, ETC.

It appearing that the United States of America, through its counsel, Ben Harrison, United States Attorney, and Norman Neukom, Assistant United States Attorney, and the appellant, Mikhail Nicholas Gorin, through his counsel, Pacht, Pelton, Warne & Black, Isaac Pacht and Clore Warne, have consented to the making of the within Order, and good cause appearing to the Court for the granting of the same:

It is ordered that the appellant, Mikhail Nicholas Gorin, have up to and including the 12th day of June, 1939 within which to prepare and serve his Assignment of Errors and within which to prepare, serve and file his proposed Bill of Exceptions; that the appellee, United States of America, have up to and including the 24th day of June, 1939 within which to prepare and serve any proposed amendments in the proposed Bill of Exceptions; and that the appellant, Mikhail Nicholas Gorin, presume to be settled by the United States District Court for the Southern District of California, and filed, the Bill of Exceptions on or before the 30th day of June, 1939.

Dated this 3rd day of April, 1939.

RALPH E. JENNY

Judge.

[Title of District Court and Cause.]
"STIPULATION RE OMISSION IN PRINTED
TRANSCRIPT OF CAPTIONS.

It is hereby stipulated by and between counsel for the respective parties hereto that, in the preparation of the printed transcript of the record on appeal in this proceeding, the captions at the top of all pleadings indicating the name of the court, name of the cause and parties and docket number, may be omitted.

Dated: April 3rd, 1939.

BENJAMIN HARRISON
United States Attorney
By NORMAN W. NEUKOM
Assistant United States Attorney
Attorneys for United States
of America
PACHT, PELTON, WARNE &
BLACK
By CLORE WARNE
Attorneys for appellant, Mikhail

It is so ordered.

Dated: April 3rd, 1939.

RALPH E. JENNY Judge [521]

Nicholas Gorin

# [Title of District Court and Cause.] STIPULATION

It is hereby stipulated by and between the United States of America by Ben Harrison, United States Attorney, and Norman W. Neukom, Assistant United States Attorney, and Mikhail Nicholas Gorin by Pacht, Pelton, Warne & Black, Isaac Pacht and Clore Warne, his attorneys, and Hafis Salich by Willard J. Stone, Jr., his attorney, as follows:

Whereas Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin were indicted jointly for the violation of Title 50 United States Code, Sections 31, 32, and 34, and were placed on trial jointly being tried at the same time, before the same court; and the same jury,

And whereas the defendants Hafis Salich and Mikhail Nicholas Gorin were each convicted of the said charges and each was sentenced on the 20th day of March, 1939 to serve a stated term of imprisonment and to pay a fine in punishment of the above offenses,

And whereas the defendants Hafis Salich and Mikhail Nicholas Gorin and each of them, through their respective counsel, served and filed a Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above mentioned convictions and sentences,

And whereas the said appeals of the said defendants Hafis Salich and Mikhail Nicholas Gorin raise many questions which are identical, and the questions to be raised on the two appeals are in all respects similar and may be conveniently determined upon the same record, transcript, and bill of exceptions,

Now therefore, it is hereby agreed as follows:

The appeal of Hafis Salich and of Mikhail Nicholas Gorin may and shall be made, prosecuted and decided on a single and consolidated record, transcript, and bill of exceptions which said consolidated record, transcript, and bill of exceptions may and shall be used on both appeals and both appeals

shall be heard thereon in the same manner as if records had been filed by the appellant in both cases. Said consolidated record, transcript, and bill of exceptions may present and preserve all assignments of error and exceptions to be taken or preserved or presented by or on behalf of either appellant.

BEN HARRISON

United States Attorney By NORMAN W. NEUKOM

Assistant United States

Attorney

PACHT, PELTON, WARNE & BLACK

By CLORE WARNE

Attorneys for Mikhail Nicholas Gorin WILLARD J. STONE, JR.

Attorney for Hafis Salich

The above stipulation is approved and it is ordered that the appeal of Hall Salich and of Mikhail Nicholas Gorin may and shall be made, prosecuted, and decided on a single and consolidated record, transcript, and bill of exceptions which said consolidated record, transcript, and bill of exceptions may and shall be used on both appeals and both appeals shall be heard thereon in the same manner as if records had been filed by the appellant in both cases. Said consolidated record, transcript, and bill of exceptions may present and preserve all

assignments of error and exceptions to be taken or preserved or presented, by or on behalf of either appellant.

RALPH E. JENNEY
Judge of United States District Court
CURTIS D. WILBUR
Judge of United States Circuit Court
of Appeals [522]

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH TO PREPARE, SERVE AND FILE TRANSCRIPT, ASSIGNMENT OF ERRORS, AND BILL OF EXCEPTIONS.

It appearing that the United States of America through its counsel, Ben Harrison, United States Attorney, and Norman W. Neukom, Assistant United States Attorney, and the appellant Hafis Salich through his counsel, Willard J. Stone, Jr., have consented to the making of the within order and good cause appearing to the Court for the granting of the same, it is ordered that the appellant Hafis Salich have up to and including the 12th day of June, 1939 within which to prepare, serve and file his proposed transcript and bill of exceptions. That the appellee United States of America have up to and including the 24th day of June, 1939 within which to prepare and serve

any proposed amendments to the proposed bill of exceptions, and that the appellant Hafis Salich procure to be settled by the United States District Court for the Southern District of California, Central Division, and file the said bill of exceptions on or before the 30th day of June, 1939.

Dated: April 11th, 1939.

RALPH E. JENNEY
Judge of the United States District Court

The above order is approved.

BEN HARRISON
United States Attorney.
By NORMAN W. NEUKOM
Assistant United States Attorney. [523]

That the article in Ken Magazine, marked as DEFENDANTS' EXHIBIT "A"

## for identification

offered in evidence by defendants and which offer was rejected by the Court upon the objection of the Government, and exception allowed, all as shown hereinbefore, appears on Page 40, Volume 1, No. 1, Ken Magazine, of the issue of April 7, 1938, and is in words and figures as follows (omitting photographs and drawings also appearing as a part of the said article):

## "EXPOSING THE PERIL AT PANAMA

Elaborately preparing Something, secret agents of the Axis infest the Canal Zone and adjacent republics. American authorities are here directed, by name and address, to a Jap shirt shop that sells no shirts, a barefoot fisherman who was piped aboard Jap battleships like a high-ranking officer, a down-at-heel barber before whom the Japanese Consul daren't be seated, an Italian stamp-collector who arranges "sales" of fascist arms, an employer who puts up his Jap "laborers" at first-class hotels, the Nazi manager of a U. S. agency who meets by night with these Jap "barbers and fishermen".

There is a little shirt shop in Colon, Panama, on Calle 10a between Avenida Herrera and Avenida Amador Guerrero whose red and black painted shingle announces that Lola Osawa is the proprietor.

Lola is an attractive and sensually exciting woman in her early thirties and you have to look twice in the dim lighted Atlantic Nite Club or the Moulin Rouge which she frequents to notice that she is Japanese, for her graceful body is always dressed in the height of Western fashion. When you do meet her you find that her scholarly dark eyes behind the octagonal shaped lenses of

her glasses are soft and kindly with an intangible something of suppressed amusement in [524] them as if she were always laughing deep within herself.

Across the street from her shirt shop, where, the red light district begins, is a bar frequented by natives, soldiers and sailors. Tourists seldom go there for it is a bit off the beaten track. In front of the bar is a West Indian boy with a tripod and camera with a telescopic lens. He never photographs natives, and wandering tourists pass him by but he is there every day from eight in the morning until dark. His job is to photograph everyone who shows an undue interest in the little shirt shop and particularly anyone who enters or leaves it. Usually he snaps your picture from across the street but if he misses you he darts across the street and waits for you to come out to take another shot.

I watched him take my picture, while my photographer took his, as I entered the store. It was almost high noon and Lola was not yet up. The business upon which she and her husband are supposed to depend for a living was in the hands of two giggling young Panamanian girls who sat idly at two ancient Singer sewing machines.

"You got shirts?" I asked.

Without troubling to rise and wait on me, they pointed to a glass case stretched across the room and barring quick entrance to the shop proper.

I examined the assortment in the case, counting a total of twenty-eight shirts.

"I don't especially like these", I said. "Got any others?"

"No more", one of them giggled.

"Where's Lola?"

"Upstairs", the other said, motioning with her thumb to the ceiling.

"Looks like you're doing a rushing business, eh?"

They looked puzzled and I explained: "Busy, eh?"

"Busy? No. No busy."

There is little work for them and neither they nor Lola care a whoop whether or not you buy any of the shop's total stock [525] of twenty-eight shirts. Lola herself pays little attention to the business from which she obviously cannot earn enough to pay the rent, let alone keep herself and her husband, pay two girls and a lookout.

The little shirt shop is a cubby hole about nine feet square, its wooden walls painted a pale, washed out blue. A deck which cuts the store's height in half, forms a little balcony which is covered by a green and yellow print curtain stretched across it. To the right, casually covered by another print curtain, is a red painted ladder by which the deck is reached. On the deck at the extreme left, where it is not perceptible from the street or shop, is another tiny ladder which reaches to the ceiling.

If you stand on the ladder and press against the ceiling directly over it, a well oiled trap door will open soundlessly and lead you into Lola's bedroom above the shop. In front of the window with the blue curtain is a worn bed, the hard mattress neatly covered with a counterpane. At the head of the mattress where Lola rests her charming head, you will notice a mended tear in the mattress.

If the American military and naval intelligence officers will rip this thread and stick their hands into the mattress they will find photographs of extraordinary secret military and naval importance. I saw four of them. The charming little seamstress, Lola Osawa, is one of the most capable of the Japanese espionage agents operating in the Canal Zone area.

Lola Osawa is not her right name. She is Chiyo Morasawa who arrived at Balboa from Yokohama on the Japanese steamship Anyo Maru on May 24, 1929, and promptly disappeared for almost a year. When she appeared again she was Lola Osawa, seamstress. She has been an active Japanese secret agent for almost nine years, specializing in getting photographs of military importance. Her husband, who entered Panama without a Panamanian visa on his passport, is a [526] reserve officer in the Japanese Navy. He lives with Lola in the room above the shop, never does any work though he is supposed to be a merchant, and is always wandering around with a camera. Occasionally he van-

ishes to Japan. His last trip was in 1935. At that time he stayed there over a year.

## II.

The ten-mile-wide strip of 46 miles of land, lakes and Canal which the Republic of Panama leased to the United States "in perpetuity" is America's life line both commercially and in time of war. To defend the Canal, the army, navy and air corps have woven a net work of secret fortifications, laid mines and placed anti-aircraft guns, and foreign spies and international adventurers play a sleepless game to learn these military and naval secrets. The Isthmus is a center of intrigue, plotting, conniving, conspiracy and espionage, with the intelligence departments of foreign governments bidding high for information, since capture or disablement of the Canal by an enemy means that American ships would have to go around the Horn to get from one coast to another, a delay which in time of war might easily prove the difference between victory and defeat.

Hollywood in its maddest moments would dismiss as too incredible some of the activitiesc of the secret agents in the Panama area. Nazi and Japanese secret agents co-ordinate their work around the Canal. Fishing boats flying the American flag, but manned by Japanese, take soundings of the waters around the Canal searching for the locations of the mines. These and many others too incredible for the movies have happened and are happening in the

Panama Canal Zone area which is now flanked by Japan, Germany and Italy, all signatories of the "anti-communist pact" which is now generally recognized as being a military agreement.

With modern means of communication and transportation any region within 500 or 1000 miles of the objective is considered in the "sensitive zone," especially if it is of great strategic impor- [527] tance in the event of war. Hence, the espionage activities embrace Central and South American Republics which may have to be used by an enemy as a base of operations. Costa Rica, north of the Canal and Colombia south of it, are beehives of secret Japanese, Nazi and Italian activities. Special efforts are made to buy or lease land "for colonization" but the land chosen is such that it can be turned into an air base almost over night.

In time of war all sorts of information is of vital importance which has little to do with military or naval secrets. A potential enemy planning to land an expeditionary force must know the coast line, the depths of the waters around it, chart the hidden rocks and submerged ledges, the topography of the land, the systems and methods of communication, the ability of the country to feed an expeditionary force as well as cultivate the friendship of the government to get co-operation.

For decades Japanese in the Canal Zone area have been photographing everything in sight, not only around the Canal, but for hundreds of miles north and south of it, and its fishing fleet has been taking soundings of the waters along the coast and its harbors. Since the Japanese-Nazi "anti-Communist pact," Nazi agents have been sent to German colonies in Central and South America to organize them, carry on propaganda and co-operate secretly with Japanese agents. Italy, which had been only mindly interested in Central America, has become extremely active in cultivating the friendship of Central American republics since she joined the Tokyo-Berlin tie-up. Let me illustrate:

The known vulnerability of the Canal caused the United States to plan another through Nicaragua. The friendship of the Nicaraguan government and people is of great importance not only from a commercial standpoint but as a war measure. Efforts to gain Nicaragua's friendship were started by Italy when she joined the Japanese-Nazi line-up. First Italy offered scholarships with all [528] expenses paid, for Nicaraguan students to study fascism in Italy. Then—

On December 14, 1937, about one month after a secret Nazi agent arrived in Central America with orders to step on the propaganda and organizational activity, the Italian steamship S. S. Leme sailed out of Naples with a cargo of guns, armored cars, mountain artillery, machine guns and a considerable amount of munitions.

On January 11, 1938, the Secretary of the Italian Legation in San Jose, Costa Rica, flew to Managua, Nicaragua, to witness the delivery of arms which arrived in Managua on January 12, 1938. Diplomatic representatives do not usually witness purely business transactions but this was a shipment worth \$300,000 which the Italian government knew Nicaragua could not pay. But, today Italy has a firm foothold in the country through which the United States hopes to build another canal. The international espionage underground world, which knew that the shipment of arms was coming, has it that Japan, Germany and Italy split the cost of the arms among themselves to gain the friendship of the Nicaraguan government.

A study of Japanese, Nazi and Italian activities around the Canal and "sensitive zone" points to an apparent division of work among these three powers. The Japanese, who have farmed the seven seas with their fishing boats seem to confine themselves to espionage on land and sea, the Germans to propaganda in Central and South America and the Italians to winning the friendship of the Panamanian and Nicaraguan governments.

A flood of Nazi propaganda sent on short wave beams is directed at Central and South America from Germany. In Spanish, German, Portuguese and English, regular programs are sent across at government expense. Government subsidized news agencies flood the newspapers with "news dispatches" which they sell at a nominal price or give away. The programs and the "news dispatches"

explain and glorify the totalitarian form of government and since many of the [529] sister "republics" are dictatorships, they are ideologically sympathetic and receptive.

The Nazis are strong in Colombia, south of the Canal, with a bund training regularly in military maneuvers at Cali. Since the Japanese-Nazi pact, the Japanese established a colony of several hundred at Corrinto in the Cauca Valley, thirty miles from Cali.

The Japanese colony was settled on land carefully chosen—long, level, flat acres which can be turned into an air base overnight for a fleet landed from an airplane carrier or assembled on the spot. And it is near Cali that Alejandro Tujun, a Japanese in cons ant touch with the Japanese Foreign Office, is today dickering for the purchase of 400,000 acres of level land for "colonization." On this many acres enough military men could be colonized to give the United States a first-class headache in time of war—if any head was left when they got through attacking. It is two hours' flying time from Cali to the Canal.

In time of peace, the friendship of these governments so intensively propagandized, means supremacy over the United States in the struggle for markets. In time of war, should Japan, Germany, and Italy be on the enemy side, it means more than one base of operations within easy flying time of America's life line.

#### III

The entrances on either side of the Panama Canal are secretly mined. The locations of these mines is one of the most carefully guarded secrets of the American navy and one of the most sought after by international spies.

The Japanese, who have been fishing along the west coast and Panamanian waters for years, are the only fishermen who find it necessary to use sounding lines to catch fish. Sounding lines are used to measure the depths of the waters and to locate submerged ledges and covered rocks in this once mountainous area. Any fleet which plans to approach the Canal or use harbors even within several [530] hundred miles north or south of the Canal must have this information to know just where to go and how near to shore they can approach before sending out landing parties.

The use of sounding lines by Japanese fishermen and the mysterious goings and comings of their boats became a little too pronounced for the Panamanian government to ignore and it issued a decree prohibiting all aliens from fishing in Panamania waters.

In April, 1937, the Taiyo Maru, flying the American flag but manned by Japanese, hauled up her anchor in the dead of night and with all lights out chugged from the unrestricted waters into the area where the mines are generally believed to be laid. The Taiyo operated out of San Diego, California;

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and once established a world record of being 111 days at sea without catching a single fish. The captain piloted the boat from previous general knowledge of the waters rather than by chart when suddenly there was a harsh, grating sound. The fishing vessel was on a submerged ledge and couldn't get off.

In the morning the authorities found her, took off her captain and crew, all of whom had cameras, and asked why the boat was in restricted waters.

"I didn't know where I was," said the captain.
"We were fishing for bait."

"But bait is caught in the daytime by all other fishermen," the officials pointed out.

"We thought we might catch some at night," the captain explained blandly.

Since 1934, when rumors of the Japanese-Nazi pact began to circulate throughout the world, the Japanese have made several attempts to get a foothold right at the entrance to the Canal on the Pacific side. They moved heaven and earth for permission to establish a refrigeration plant on Taboga Island, some twelve miles out on the Pacific Ocean and facing the Canal. Taboga Island would make [531] a perfect base from which to study the waters and fortifications along the coast and the islands between the Canal and Taboga.

When this and other efforts failed and there was talk of banning alien fishing in Panamanian wa-

ters, Yoshitaro Amano, who runs a store in Panama and has far flung interests all along the Pacific coasts of Central and South America, organized the Amano Fisheries, Ltd. In July, 1937, he built the Amano Maru in Japan, as luxurious a fishing boat as ever sailed the seas. With a purring Diesel engine, it has the longest cruising range of any fishing vessel afloat, a powerful sending and receiving radio with a permanent operator on board, and, the international espionage grapevine has it, an extremely secret Japanese invention enabling it to detect and locate mines.

Amano, though he is rated a millionaire in Chile, goes in for a little photography like all other Japanese in the Canal Zone area. In September, 1937, word spread through the international espionage grapevine that Nicaragua, through which the United States was planning another canal, had some sort of peculiar fortifications in the military zone at Managua.

The Japanese millionaire appeared at Managua with his expensive camera and headed straight for the military zone. In thirty minutes (8:00 a.m. of October 7, 1937) he was in a Nicaraguan jail charged with suspected espionage for taking pictures in prohibited areas.

I mention this incident because the luxurious boat was registered under the Panamanian flag and immediately began a series of actions so peculiar that the Republic of Panama canceled the Panamanian registry. The Amano promptly left for Puntarenas, Costa Rica, north of the Canal, which has a harbor big enough to take care of almost all the fleets in the world. Many of the Japanese ships went there, sounding lines and all, when alien fishing was prohibited in Panamanian waters. Today the Amano Maru is a mystery [532] ship haunting Puntarenas and the waters between Costa Rica and Panama and occasionally vanishing out to sea with her wireless crackling constantly.

Some seventy fishing vessels operating out of San Diego, California, fly the American flag. San Diego is of great importance to a potential enemy because it is a naval as well as an air base. Out of these vessels flying the American flag, ten are either partially or entirely manned by Japanese.

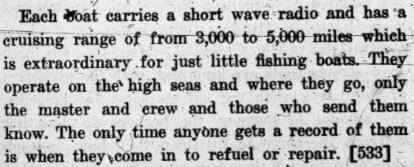
Let me illustrate how boats fly the American flag:

On March 9, 1937, the S. S. Columbus was registered as an American fishing vessel under certificate of registry No. 235,912 issued at Los Angeles, California. The vessel is owned by the Columbus Fishing Company of Los Angeles.

I do not know where the beat went but on December 9, 1937, she appeared at Balboa, Panama. The captain, R. I. Suenaga, is a 26-year-old Japanese, born in Hawaii and a full fledged American citizen. The navigator and one sailor also are Japanese, born in Hawaii but American citizens. The crew of ten consists entirely of Japanese born in Japan.

The ten boats which fly the American flag but are manned by Japanese crev's are:

Alert
Asama
Columbus
Flying Cloud
Magellan
San Lucas
Santa Margarità
Taiyo
Oipango
Wesgate



In the event of war half a dozen of these fishing vessels, stretched across the Pacific at intervals of 500 or 1,000 miles would make a perfect system of communication for messages which could be relayed from one to another and in a few moments be at their destination.

## ine and IV margarity of the first

In Colon on the Atlantic side and in Panama on the Pacific, East and West literally meet at the cross roads of the world. The winding streets are crowded with brown and black skins who comprise three-fourths of Panama's population. Old world stores seek the tourist trade, turbaned Hindus offer the silks of India and Chinese the embroideries of old Cathay. Panamanian and West Indian tailors seek the army and navy trade and the innumerable bars cater to everyone. And on these teeming, hot, tropical streets are some 300 Japanese storekeepers; fishermen, commission merchants and barbers, few of whom do much business but all of whom sit patiently in their doorways, reading the newspapers or staring at the passersby.

I counted 47 Japanese barbers in Panama and 8 in Colon. In Panama they cluster on Avenida Central and Calle Carlos A. Mendoza. On both these streets rents are high and, with the exception of Saturdays when the natives come for haircuts, the amount of business the barbers do does not warrant the three to five men they have in each shop. Yet, though they earn scarcely enough to meet their rent, there is not a lowly barber among them who does not have a Leica or Contax camera with which, until the sinking of the Panay, they wandered around, photographing the Canal, islands around the Canal, the coast line, and topography of the land.

They live in Panama with a sort of permanence, but nine out of ten do not have families, even those advanced in years. Periodically some of them take trips to Japan, though, if you watch their business carefully you know they could not possibly have earned enough to pay for their passage. And those in the outlying districts [534] don't even pretend to have a business. They just sit and wait, without any visible means of support. It is not until you study the locations where they are, as in the Province of Chorrera, that you find they are in spots of strategic military or naval importance.

With so many barbers in Panama, the need for an occasional gathering without attracting too much attention is apparent and the little barber, A. Sonada, who shaves and cuts hair at 45 Carlos A. Mendoza Street, organized a labor union, the Barbers' Association. The Association will not accept barbers of other nationalities but will allow Japanese fishermen to attend their meetings. They meet on the second floor of the building at 58 Carlos A. Mendoza St., where many of the fishermen live and at these meetings a guard stands outside the room and another downstairs at the entrance to the building.

On hot Sunday afternoons when the Barbers' Association gathers, the diplomatic representatives of other nations are usually taking a siesta or are down at the beach, but Tetsuo Umimoto, the Japanese Consul, climbs the stairs in the hot, stuffy atmosphere and sits in on the deliberations of the barbers and visiting fishermen. It is the only union I ever heard of, the deliberations of whose 47 members are considered important enough for the dip-

This labor union has another extraordinary custom. It has a special fund to put competitors up in business. Whenever a Japanese arrives in Panama, the Barbers' Association opens a shop for him, buys the chairs and takes care of everything so their competitor in the shaving and shearing industry can have a place to call his own while he competes with them for the scarce trade!

At these meetings the barber Sonada who is only a hired hand, sits beside the Japanese Consul at the head of the room and Umimoto remains standing until Sonada is seated. When another barber, T. Takano, who runs a little hole in the wall shop and lives at/10 [535] Avenida B, shows up, both Sonada and the Consul rise, bow very low and remain a anding until he motions them to be seated. Maybe it's just an old Japanese custom but the Consul does not extend the same courtesy to the other barbers.

In attendance at these guarded meetings of the barbers' union and visiting fishermen is Katarino Kubayama, a gentle-faced, soft-spoken, middle-aged man who is a business man with no visible business. He is 54 years old now and lives at Calle Colon, Casa No. 11, and for the benefit of the Panamanian immigration officials, I might add that his alien registration card which he filled out is not quite accurate, like most of the cards the other Japanese filled out. Kubayama stated that he came to Pan-

ama on May 10, 1930, which is correct, but that was when he returned from a trip to Japan. Actually he has been in the Canal Zone area since before the World War.

Way back in 1917 Kubayama was a barefoot Japanese fisherman like the others now on the west coast. One morning two Japanese battleships appeared and anchored in the harbor. From the reed and vegetation covered jungle shore a sun dried, brown Panga shot out, with the barefooted fisherman rowing the flat bottomed boat with the short quick strokes of the native. His brown, soiled dungarees were rolled up to his calves, his shirt, open at the throat, was torn and his head was covered by a ragged straw hat.

The silvery notes of a trumpet sounded over the limpid blue waters of the Pacific. The crew of the flagship lined up at attention. The officers, including the Commander, also waited stiffly at attention while the ragged fisherman tied his panga to the ship ladder. As Kubayama clambered on board the officers saluted and with a great show of formality escorted him to the Commander's quarters, the fisherman's bare feet leaving wet tracks on the spotless deck. The junior officers followed behind at a respectful distance, and when, two hours later, Kubayama, was escorted to the ladder again, this courtesy extended only to a high ranking officer of the Japanese navy [536] was gone through with,

the trumpet sounding its salute as the ragged fisherman in the panga rowed away.

Today Kubayama works closely with the Japanese Consul. Together they call upon the captains of Japanese ships whenever they come to Panama and are closeted with them for hours at a time. Kubayama says he is trying to sell supplies to the captains.

Other Japanese in the Canal Zone area just change their names periodically or come with several passports all prepared, like Shoichi Yokoi who commutes between Japan and Panama without any business reasons. On June 7, 1934, the Japanese Foreign Office in Tokyo issued passport No. 255875 to him under the name of Masakazu Yokoy with permission to visit all Central and South American countries. Though he had permission for all, he applied only for a Panamanian visa on September 28, 1934. after which he settled down for a while to live with the fishermen and barbers. On July 11, 1936, Masakazu Yokoy was handed another passport in Tokyo by the Foreign Office under the name of Shoichi Yokoi and a mess of visas which filled the whole passport and overflowed into several extra pages. Shoichi or Masakazu is now traveling with both passports. He left Panama for Port-au-Prince. Haiti, January 16, 1938, on the S. S. Colombia as Shoichi Yokoy. Besides two passports he has a suitcase full of film for his camera. He will be in the Caribbean and Central American areas for the

next two years if any of those countries are interested in picking him up.

#### V

Several years ago a Japanese named T. Tahara came to Panama as the traveling representative of a newly organized company, the Official Japanese Association of Importers and Exporters for Latin America, and established headquarters in the offices of the Boyd Bros., shipping agency in Panama. [537]

Nelson Rounsevell, publisher of the Panama American who has fought Japanese colonization, in Canal areas, published a story that this big business man got very little mail, made no efforts to establish business contacts and, in talking with the few business men he met socially, showed a complete lack of knowledge about business. Tahara got himself talked about and orders promptly came through for him to shake a leg and return to Japan.

This was in 1936. Half a year later, a smooth, suave Japanese named Takahiro Wakabayashi appeared in Panama as the representative of the Federation of Japanese Importers and Exporters. Wakabayashi checked into the cool and spacious Hotel Tivoli, run by the United States government on Canal Zone territory and, protected by the guardian wings of the somewhat sleepy American Eagle, washed up and made a beeline for the Boyd Bros. office where he was closeted with the general manager for over an hour.

Wakabayashi's business interests ranged from taking pictures of the Canal in specially chartered planes, to negotiating for manganese deposits and efforts to establish an "experimental station to grow cotton in Costa Rica."

The big manganese-and-cotton-photographer man fluttered all over Central and South America, always with his camera. One week he was in San Jose, Costa Rica, the next he made a hurried special flight to Begota, Colombia (November 12, 1937) then back to Panama and Costa Rica. Finally he got permission from Costa Rica to establish his experimental station.

In obtaining that concession he was aided by Giuseppe Sotanis, an Italian gentleman wearing the Fascist insignia in the lapel of his coat, whom he met at the Gran Hotel in San Jose. Sotanis, a former Italian artillery officer, is a nattily dressed, slender man in his early forties who apparently loes nothing in San Jose except study his immaculate finger nails, drink Scotch and sodas, collect stamps and vanish every few months only to reappear again, still studying his immaculate finger nails. It was Sotanis who arranged for Nicaragua to get the shipment of arms and munitions which I mentioned earlier. [538]

This mysterious Italian stamp collector paved the way for Wakabayashi to meet Raul Gurdian, the Costa Rican Minister of Finance and Ramon Madrigal, vice-president of the government-owned National bank and a prominent Costa Rican merchant. Shortly after Costa Rica gave Wakabayashi permission to experiment with his cotton growing, both the Minister of Finance and the vice-president of the government bank took trips to Japan. I didn't even try to find out who paid for them.

The ink was scarcely dry on the agreement to permit the Japanese to experiment in cotton growing, when a Japanese steamer appeared in Puntarenas with twenty-one young and alert Japanese and a bag of cotton seed. They were "laborers" Wakabayashi explained. The "laborers" were put up in first-class hotels and took life easy while Wakabayashi and one of the laborers started hunting a suitable spot on which to plant their bag of seed. All sorts of land was offered to them, rich soil in protected valleys but Wakabayashi wanted no land anywhere near a hill or mountain. He finally found what he wanted half-way between Puntarenas and San Jose, long, level, flat acres. He wanted this land at any price and finally rented it at an annual price equal to the value of the acres.

The twenty-one "laborers" who had been brought from Chimbota, Peru, where there is a colony of 20,000 Japanese, planted an acre with cotton seed and sat them down to rest. They are still resting there, imperturbable, bland, silent, waiting. The land has been plowed. It is as smooth and level as the acres at Corrinto in Colombia, south of the Canal.

The harbor at Puntarenas, where the Japanese fishermen are busy, would make a perfect base of operations for any enemy fleet, as I mentioned earlier. Not far from shore are the flat level acres of the "experimental station" and twenty-one Japanese who could turn these smooth acres into an air base almost overnight. It is north of the Panama Canal and within two hours' flying time of it, as Corrinto [539] is south of the Canal and within two hours' flying time.

#### VI

The Boyd Bros. steamship agency to which Tahara and Wakabayashi went immediately upon arrival, is an American concern. The manager, with whom each was closeted, is Hans Hermann Heildelk of Anenida Peru, No. 64, Panama City, and, though efforts have been made to keep it secret, part owner of the agency. Heildelk is also the son-in-law of Ernest E Neumann, the Nazi consul to Panama.

On November 15, 1937, Heildelk returned from Japan by way of Germany. Five days later, on November 20, 1937, his father-in-law, who, besides being Nazi consul, owns, in partnership with Fritz Kohpcke, one of the largest hardware stores in Panama, told his clerks that he and his partner would work a little late that night. Neither partner went out to eat and the corrugated sliding door of the store at Norte No. 54 in the heart of the Panamanian commercial district, was left open about

three feet from the ground so that passersby could not see inside unless they stooped deliberately.

When all neighborhood stores were dark and the half-naked Panamanian and West Indian children and their parents sat outside for a breath of air in the cool tropical evening, the two partners sat at their adjoining desks in the rear of the store. The one bright light overhead threw dark shadows upon the rows of shelves filled with hardware. A third desk facing Kohpeke had a pile of printed material and mail which had just come in from Germany.

Promptly at eight o'clock a car drew up at the corner of the darkened street in front of Neumann & Kohpcke, Ltd. Two unidentified men, Heildelk and Walter Scharpp, former Nazi Consul at Colon who also had just returned from Germany, stepped out, and stooping under the partly open door, entered the store. Once inside Scharpp quietly assumed command. For all practical purposes they were on German territory for the Nazi consulate office was in the store. [540]

Scharpp announced that the group had been very carefully chosen because of their known loyalty to Nazi Germany and their desire to promote friendship for Germany in Latin American countries and to co-operate with the Japanese who had their own-organization functioning efficiently in Central and South America.

stand?"

"Some of these countries are already friendly," said Scharpp, "and we can work undisturbed provided we do not interfere in the Panama Canal Zone."

"Is North American territory, and you will have trouble from their officials, intelligence officers and political pressure from the States. You under-

"Panama is friendly to North America," said Kohpcke significantly.

"Precisely, we must watch the Panamanian government very carefully. At the present time it is not wise to do much more than broadcast but at a propitious time we shall be able to explain National Socialism to the Panamanians."

He looked at the heavy-eyed Kohpeke whose left eyelid drooped more than his right and gave him the appearance of being perpetually sleepy. Kohpeke looked at Neumann who ran the palm of bis hand over his slightly bald head and nodded.

"Tonight we want to organize a bund in Panama. In a few days I am going to Costa Rica to organize another and then leave for Valparaiso."

The others nodded. They had been informed that Scharpp was to have complete charge of Nazi activities from Valparaiso to Panama. That night, they established Der Deutche Auslandischer Nazi Genossenschaft Bünd, with the understanding that it function secretly. The list of members was to be controlled by Neumann.

Scharpp explained that secrecy was advisable to avoid antagonizing the Panamanian government, "which is friendly to Italy and we can co-operate with the Italian Legation here." [341]

"The Japanese are more important than the Italians," the sleepy-eyed Kohpcke pointed out.

"The Japanese will work with us," Heildelk as-

"But we can't be seen with them-"

"Flitz (Kohpcke) will call a meeting in Jacobs' house near the Panama airport," said Scharpp.

"Jacobs!" exclaimed one of the unidentified men.

"You don't mean the Austrian Consul!"

Scharpp nodded slowly. "He is generally believed to be anti-Nazi. His partner spent twelve years in Japan and speaks Japanese perfectly. The Japanese Consul knows and trusts both. We cannot find a better place."

On the night of December 13, 1937, forty carefully selected Germans who, during the intervening month had become members of the bund in Panama, arrived singly and in small groups to the new home where August Jacobs-Kantstein, Panamanian merchant and Austrian honorary consul lived.

Five Japanese, headed by Tetsuo Umimoto also came. One, K. Ishibashi, formerly captain of the Hokkai Maru and a reserve officer in the Japanese

navy; K. Ohihara, a Japanese agent staying with the Japanese consul but having no visible reason to be in Panama; two captains of Japanese fishing boats and A. Sonada, the barber who organized the labor union and in whose presence the consul will not sit until the barber is seated.

Throughout the meeting, presided over by the elderly but tall, soldierly Austrian consul, the Japanese said little. It was primarily the first gettogether for Nazi-Japanese co-operation in the Canal Zone area.

"Mr. Umimoto has not said much," said the Austrian Consul once, tugging at his snowy mustaches extending fiercely across his face.

"There is so little to say—when there are so many present," [542] said the little Consul apologetically but significantly.

The others understood. The Japanese were too shrewd to discuss detailed plans with so many present. A few days later Umimoto called upon Heildelk and was closeted with him for three hours, and shortly after that Sonada left for Japan. He is expected back early in June.

### VII

Today propaganda comes in a ceaseless stream from Nazi Germany; Italian fascist arms are delivered to Nicaragua with no indication of payment; Japanese agents have a vast espionage ring and have already flanked America's life line both to the north and to the south with potential air bases.

These three powers have demonstrated their aggressive, war-like policies. Now they have turned hungry eyes toward Central and South America despite the Monroe Doctrine. Desperate efforts are made to learn Canal defense secrets, the waters and the harbors are being charted. What are they preparing for?

(End of Defendants' Exhibit "A" for Identification.) [543]

# [Title of District Court and Cause.] STIPULATION FOR ORDER SETTLINIG BILL OF EXCEPTIONS

It is hereby stipulated by and between the Government and the defendants herein that the foregoing Bill of Exceptions has been duly presented within the time allowed by law and the rules and orders of this Court, and that the same is in proper form and conforms to the truth and sets forth all of the evidence and all of the proceedings taken and had upon the trial of the above entitled action, and that it may be settled, allowed, signed and certified by said Court as the Bill of Exceptions herein presented and filed on behalf of said defendants, and that it may be made a part of the record of this cause.

Dated: this 29th day of June, 1939.

BEN HARRISON,

United States Attorney

By NORMAN W. NEUKOM

Assistant United States

Attorney

Attorney for Plaintiff
PACHT, PELTON, WARNE

& BLACK

By CLORE WARNE
CLORE WARNE

Attorneys for defendant Mikhail Nicholas Gorin WILLARD J. STONE, JR.

Attorney for defendant.

Hafis Salich

## ORDER SETTLING BILL OF EXCEPTIONS

The foregoing Bill of Exceptions together with Stipulation attached thereto, having been-duly presented within the time allowed by law and the rules and orders of this Court, and appearing correct in all respects is hereby approved, allowed, settled and made a part of the record of said action.

Dated: this 29 day of June, 1939.
RALPH E. JENNEY

United States District Judge

[544]

Received copy of the within Bill of Exceptions this 10th day of June, 1939.

BEN HARRISON, ESQ.,
United States Attorney
By WM. FLEET PALMER,
Assistant

[Endorsed]: Lodged Jun. 10, 1939.

[Endorsed]: Settled and filed Jun. 29, 1939.

In the United States Circuit Court of Appeals

For the Ninth Circuit

No. 9136

UNITED STATES OF AMERICA,

Plaintiff,

VS.

HAFIS SALICH and MIKHAIL NICHOLAS GORIN,

Defendants.

STIPULATION RE: ASSIGNMENT OF ER-RORS ON APPEAL OF DEFENDANT - HAFIS SALICH.

It is hereby stipulated by and between Ben Harrison, United States Attorney, by Norman W. Neukom, Assistant United States Attorney, on behalf of the United States of America, and Willard J. Stone, Jr., attorney for defendant Hafis Salich, on behalf of said defendant Hafis Salich as follows:

That whereas, upon the trial of the said defend-

ant, the Government sought to and did introduce into evidence certain documents designated as Government Exhibits 5A through 5M inclusive, and 6A through 6DD inclusive, and a certain other document introduced as Government Exhibit No. 3, to all of which documents an objection was made by the defendant Salich which said objection made to each and every one of said documents was overruled, and said documents were admitted into evidence over the objection of said defendant pursuant to the stipulation and ruling of the Court all as appears by the record as follows:

"Mr. Harrison: Now, if the Court please, we desire to offer in evidence report number designated as 833.

To which offer objection was made on behalf of the defendant Gorin upon the following grounds:

- 1. That no proper foundation has been laid for the introduction of said writing, for the reason that it has not [147] been shown, and there is no evidence to prove, that said report, or any part thereof, relates to or is connected with the national defense of the United States.
- 2. That said report on its face shows that it is not a part of and is not connected with and does not relate to the national defense of the United States as that term is used in Section 31, 32 and 34 of the Espionage Act.

- 3. That said report is not an instrument, writing, or document connected with or relating to the national defense as that term is used in Section 31, 32 and 34 of the Espionage Act.
- 4. That said report on its face shows that it is but a communication by one officer of the United States Navy to another officer of said Navy reporting certain information acquired by said reporting officer concerning the acts and conduct of certain persons in the United States, and that it is not connected with nor does it relate to the national defense of the United States as that term is used in the Espionage Act.
- 5. That said report shows on its face that it is but the conclusion and opinion of the reporting officer relative to the acts and conduct of a certain individual or individuals and the transmission of said reporting officer to another officer of such conclusions and opinions, and that it is not anything connected with the national defense or relating to the national defense as that term is used in the Espionage Act under which this prosecution is being had.
- 6. That the introduction of said report in evidence would have the effect of making the judgment, opinion and conclusion of an officer of the United States Navy a standard whereby to determine the conduct of the defendants and other [148] persons dealing with the United

States Navy and permitting said officer to in effect legislate and create criminal statute.

- 7. That the introduction in evidence of said report would be to give to a regulation of the United States Navy relative to information acquired by its officers and employees the effect of a criminal statute, all in violation of the Fifth and Sixth Amendments of the Constitution of the United States.
- 8. That no proper foundation has been laid for the introduction of said writing for the reason that it has not been shown, and there is no evidence to prove, that a conspiracy was entered into to which the defendant Gorin was a party, and for the further reason that the corpus delicti has not been established.
- 10. That the said document constitutes hearsay testimony as to the defendant Gorin and is not binding on him.

Mr. Stone: May I join in that objection, your Honor, as to all the grounds stated by Judge Pacht, save grounds 8, 9 and 10?

The Court: As to grounds 1 to 7, the objection is overruled and exception allowed.

As to objections 8, 9 and 10—was 10 the last one?

Mr. Pacht: Yes, your Honor.

The Court: As to objections 8, 9 and 10, the objection will likewise be overruled, subject to a motion to strike at some later time in the

event that the proper connection is not made, the order of proof being largely within the discretion of the Court. An exception is allowed as to these also.

The Clerk: That will be Government's Exhibit 5 (a).

Mr. Pacht: Contained in Exhibit 5? [149]

Mr. Harrison: This number will be 5(a), indicating that it is folder marked No. 5 for identification, and the specific exhibit is marked '(a).'

Whereupon the document referred to was received in evidence and marked 'Government's Exhibit No. 5(a).'

The Court: Now, I presume you propose to make the same formal objection to each one of these proffers of exhibits, is that correct?

Mr. Pacht: That is correct.

The Court: Then, in order to save counsel the burden of repeating his objection, may we not have a stipulation on that subject, and a stipulated ruling?

Mr. Harrison: As far as the Government is concerned, we are perfectly willing that the objection heretofore made shall be deemed as applying to the offering of each and every one of these documents.

The Court: And that the objection is overruled and an exception allowed as to each one? Mr. Harrison: Yes. The Court: Then, if there is any special objection to one particular document, that may be reserved and made at the time, and ruled upon separately.

Mr. Pacht: Yes, but is not necessary for me to urge objections to each separate report which Mr. Harrison intends to introduce from this volume?

The Court: You will not be so required, provided your objection is on the ground already stated.

Mr. Pacht: Yes.

The Court: If you have a distinct and separate objection to one of these, you must make it specifically.

Mr. Pacht: Yes.

Mr. Stone: And that applies, of course, to the defendant Salich as well, your Honor?

The Court: The same ruling and the same stipulation will be accepted as to the defendant Salich.

Mr. Stone: That is satisfactory.

The Court: Is it so stipulated?

Mr. Stone: Yes. Mr. Pacht: Yes.

Mr. Harrison: So stipulated, if the Court please."

And whereas for the purpose of preparing the assignment of errors on behalf of the defendant Salich

it would unnecessarily encumber the record to set out in each and every error assigned respecting the introduction of each of these aforesaid documents, the entire grounds for the objection to said evidence, and the verbatim contents of each of the said documents.

And whereas there was offered in evidence by the defendant Salich as an exhibit, which offer was rejected, a certain article contained and published in "Ken," a magazine of national circulation, the whole of which appears and will be set forth word for word in the bill of exceptions herein, and it will unnecessarily encumber the record on appeal to again set said article forth in the assignments of error.

Now therefore it is stipulated that it will be sufficient for the purposes of this appeal, to set forth in the assignment of errors urged as to the admission of the first of said documents, all as noted above, the full grounds of the objections stated by the defendant Salich, the ruling of the Court therein, and the exceptions noted thereto, and the verbatim contents of the said exhibit, and as to each of the remaining assignments of error specifically referring to the introduction of the remainder of said series of documents, it will be sufficient to refer to the grounds stated and set forth in the [151] assignment of error to the first of said documents as indicated herein, and it will be further sufficient to refer to and identify the exhibits as they are set

forth in the bill of exceptions without repeating the same in the assignment of error verbatim.

It is further stipulated that it will be sufficient, for the purposes of this appeal, in the assignments of error urged as to the refusal of the Court to admit into evidence the Ken magazine article, to specify and refer to it as printed in the bill of exceptions, without setting the same forth word for word in said assignment of error.

Dated: This 7th day of June, 1939.

BEN HARRISON,

United States Attorney

By NORMAN W. NEUKOM

Assistant United States Attorney.

WILLARD J. STONE, JR.

Attorney for defendant. Salich.

### ORDER

Upon the attached stipulation of the parties and good cause appearing therefor;

It is ordered that in the Assignment of Errors of the defendant Salich, it will be sufficient to refer to and specify by reference to the verbatim copies of exhibits appearing in the Bill of Exceptions as to Government Exhibits 5B to 5M inclusive and 6A to 6DD inclusive without repeating said exhibits verbatim in said Assignment of Errors, and that

there need be no repetition in the Assignment of Errors of grounds of objections urged to said exhibits except as set forth in the Bill of Exceptions by reference to the grounds urged as to Government Exhibit 5A. [152]

It is further ordered that it will be sufficient for the purposes of this appeal in the Assignments of Error urged as to the refusal of the Court to admit into evidence a certain article contained and published in "Ken," a magazine of national circulation, and designated as Defendant's Exhibit A for identification, to specify and refer to it as printed in the Bill of Exceptions without setting the same forth word for word in said Assignment of Errors.

Dated this 9th day of June, 1939.

# CURTIS D. WILBUR

Judge, United States Circuit Court of Appeals [153]

# [Title of District Court and Cause.] ASSIGNMENT OF ERRORS

Comes now the said Hafis Salich, defendant and appellant in the above entitled cause, and files the following Assignment of Errors upon which he will rely in the prosecution of the appeal heretofore noticed in said cause from the judgment of conviction and sentence of this Court pronounced on the 20th day of March, 1939.

1

The Court erred in overruling the demurrer and motion to quash indictment made by defendant Hafis Salich.

#### H

The Court erred in denying motion of defendant Hafis Salich for a directed verdict made at the conclusion of the opening statement of the District Attorney.

#### III

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney, Mr. Harrison, propounded to Witness Alice A. Nelson:

Q. What did Mrs. Gorin say to you at that time:

To which question objection was made on behalf
of defendants Gorin and Salich on the ground that
it was hearsay as to [60] them, not binding, incompetent, irrelevant, and immaterial, and on the further ground that no foundation had been laid and
no proof of any conspiracy had been introduced,
which said objection was overruled, subject to a
motion to strike said testimony if not connected up.
Exception allowed.

The Witness: She asked me when I expected Mr. McCloud in, and how long did I think she would have to wait for him.

By Mr. Harrison:

Q. Did you make any reply to her?

- A. I fold her that it would be some time around 12:00 or 12:30; that he usually came in about that time.
- Q. And what time did you say this conversation took place, about what time?
  - A. Around 10:30 in the morning.
- Q. Was that the substance of your conversation at that time?
- A. Yes. She came back and asked me, I would say may two or three times afterwards, how much longer—
  - Q. (Interrupting) I mean at that time.
  - A. At that time that was all there was to it.
  - Q. Then at that time what did Mrs. Gorin do?
  - A. She went out and sat down in the office.
  - Q. Did she continue to remain there?
- A. Part of the time; part of the time she was walking around.
- Q. Did you have any further conversation with her that morning?
- A. That was the substance of it, because that was what she was asking. She asked me perhaps two or three times more, how much longer I thought it would be, and if I had heard from Mr. McCloud.

[61]

# IV

The court erred in denying the motion made on behalf of the defendant Salich to strike the whole of the testimony of the Witness Alice A. Nelson as follows:- (Direct Examination): Evidence of Witness Alice A. Nelson.

By Mr. Harrison:

My name is Alice A. Nelson and I live at 1907 Lucile Avenue. I own a dry cleaning establishment located at 4400 Melrose. It is operated under the hame of Leonard and Nelson Dry Cleaning Company. I have never seen Mrs. Gorin until September 30th when she came into the store. I would say it was approximately 10:30 in the morning when she came to my place on that day. The office force was present when she came in. A gentleman was with her. I would know him again if I saw him. I didn't know his name at the time. Thereafter I learned his name. It was Stepanian. I had a conversation with Mrs. Gorin at my place of business when she came in that morning. I think perhaps Mr. Leonard was also present. I couldn't say definitely. We were all working in the back part of the store, and Mrs. Gorin was standing at the back part of the store, where they could hear any conversation that went on. Whether they made any note of it or not, I couldn't say.

Q. What did Mrs. Gorin say to you at that time? To which question objection was made on behalf of defendants Gorin and Salich on the ground that it was hearsay as to them, not binding, incompetent, irrelevant and immaterial, and on the further ground that no foundation had been laid and no proof of any conspiracy had been introduced, which

said objection was overruled, subject to a motion to strike said testimony if not connected up. Exception allowed.

The Witness: She asked me when I expected Mr. McCloud in, and how long did I think she would have to wait for him.

[62]

# By Mr. Harrison:

- Q. Did you make any reply to her?
- A. I told her that it would be some time around 12:00 or 12:30; that he usually came in about that time.
- Q. And what time did you say this conversation took place, about what time?
  - A. Around 10:30 in the morning.
- Q. Was that the substance of your conversation at that time?
- A. Yes. She came back and asked me, I would say maybe two or three times afterwards, how much longer—
  - Q. (Interrupting) I mean at that time.
    - A. At that time that was all there was to it.
    - Q. Then at that time what did Mrs. Gorin do?
    - A. She went out and sat down in the office.
    - Q. Did she continue to remain there?
- A. Part of the time; part of the time she was walking around.
- Q. Did you have any further conversation with her that morning?
- A. That was the substance of it, because that was what she was asking. She asked me perhaps two or three times more, how much longer I

thought it would be, and if I had heard from Mr. McCloud.

Q. Did you notice her demeanor at that time?

To which question objection was made by the defendant Gorin upon the ground as calling for the opinion of the witness, which objection was overruled. Exception allowed.

### The Court:

The witness is instructed not to say what she concluded about the conduct of the witness, or to draw any inferences. She [63] may tell what Mrs. Gorin did and what her actions were. If, from that, the jury is able to say that she was glad or laughing or agitated, that is a matter for the jury to determine.

# By Mr. Harrison:

Q. Will you proceed in accordance with the Court's instructions, Mrs. Nelson?

Evidence of Alice A. Nelson continued.

A. Well, I don't know just what I would say, except that she walked around the store, she wouldn't remain seated. We offered her a magazine, and she didn't want to read. And that was about all I could say.

(Witness continues) That morning she asked me about three times how much longer I thought it would be before Mr. McCloud would come in. Mr. Stepanian did not remain there during the balance of the morning. He left about a half hour after they arrived. I did not tlak to Mrs. Gorin at any time

that morning on the telephone. I was not present when the envelope was returned to her. I did not remain at the shop all morning. I left around twelve o'clock to meet Mr. McCloud. When I met him he showed me a plain envelope with a sheet of paper with typewriting on it, and a map drawn on it, and some writing at the bottom in a foreign language which I didn't know what it was-and a \$50 bill. The document Mr. McCloud showed me was a plain sheet of paper, with some typewriting at the top, mentioning some Japanese names, Nakadate was one, and some Japanese dentists, also by the name of Nakadate, as I recall; and a beauty shop operated in San Diego; and a map drawn at the bottom of it, showing a square in the center, and two squares down at the bottom like they might be branches or something of the sort, and the writing was at the bottom of it. I could not read the writing. It was unintelligible to me. I would say that Government's Exhibit No. 3 for [64] identification which you have shown me was an exact copy of it except for the writing at the bottom. I had no conversation with Mrs. Gorin relative to whether or not the money had been found.

#### Cross Examination

## By Mr. Stone:

At the time I met Mr. McCloud it was close to twelve o'clock. I was with him I should say five minutes, maybe ten. I met him at the corner of Beverly and Kenmore. We sat in the car and looked over this paper, and discussed what to do with it. At the end of ten minutes I returned to the shop. I have never seen the original paper since I first saw it in the car.

Defendant Salich then moved the Court to strike the whole of the testimony of the witness Alice A. Nelson upon the ground that it was not binding on him and did not tend to prove or disprove any of the issues against him, which said motion was denied. Exception allowed.

#### V

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney propounded to Witness Denton W. Leonard:

Q. (Repeated) And what did the party purporting to be Mrs. Gorin say to you.

To which question objection was made on behalf of the defendants Gorin and Salich that it was hearsay as to them and that no conspiracy had as yet been proven and that any statement made by Mrs. Gorin was not binding on them, which objection was overruled. Exception allowed.

The Witness: She said that our driver had called at their home and picked up several garments for dry cleaning, and that in [65] the pocket of one of the suits was some money and some valuable papers.

By Mr. Harrison:

Q. Was anything else said by you to her in response to that statement?

A. I told her that if they were in the pocket when he picked them up, they would be in the pocket when he brought them in, or he would find them in the meantime.

The Court: Will you repeat that last portion of your statement? I didn't get it.

The Witness: I told her that if they were in the pocket when he picked the garment up, that they would still be there when he brought it in, or else he might have found them in the meantime.

#### VI

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney propounded to Witness Roy Hanna:

Q. Will you relate to the jury the conversation that you overheard between Commander Davis, Commander Rochefort, and defendant Salich?

To which question defendant Gorin objected upon the grounds that even though it was not offered against him, it was all remote, and irrelevant, not to be binding, and that the relation of such conversation would bring before the jury matters which could not but be highly prejudicial, which said objection was overruled. Exception allowed.

The defendant Salich objected upon the ground that it would not tend to prove or disprove any

issue in the case and would be inflammatory and prejudicial, which said objection was overruled. Exception allowed. [66]

A. Commander Davis, when Salich came in the office, I was introduced to Salich, and Commander Rochefort was introduced to Salich.

- Q. A little louder so we can all hear you.
- A. In the course of the conversation Lieutenant-Commander Rochefort told Salich what the office did and the—
  - Q. (Interrupting) Wait. Relate what he said.
- A. Mr. Rochefort said that everything that Salich did in the office, or outside of the office, was confidential, and that at no time was he to reveal anything that occurred in the office to anyone on the outside, and in addition, he further instructed Salich that he was not to tell any member of his family or his wife.
- Q. Did he tell him what position he was being employed in, or what position he was to fill?
- A. He told him he was being employed as an investigator.
  - Q. For what?
  - A. For the Naval Intelligence.
- Q. And did Mr. Salich say anything during that conversation, as you recall?
- A. Mr. Salich asked whether or not he could obtain an identification card or some badge with which to work with on the outside.
  - Q. Did he state what type of a badge he wanted?

- A. To identify himself with the Naval Intelligence or some other badge which would give him authority.
  - Q. What was told to him?
- o A. He said—Mr. Rochefort said—that the Navy, or the officers of the Naval Intelligence, did not issue any passes of any kind or badges or identification cards.
- Q. Did he have any conversation with him at that time as [67] to whether or not he was to disclose his identity, as you recall?
- A. Mr. Rochefort told him that he would at that time not reveal that he was working for the Naval. Intelligence.

# By Mr. Neukom:

- Q. Do you recall to your best recollection the date in August of 1936 that this took place?
  - A. 15th of August, 1938
  - Q. That is your best recollection?
  - A. That is right. '.

### VII

The Court erred in denying the motion of defendant Salich to strike the whole of said conversation related by said witness Roy Hanna as follows:

Evidence of Witness Roy Hanna.

Q. Will you relate to the jury the conversation that you overheard between Commander Davis, Commander Rochefort, and defendant Salich?

To which question defendant Gorin objected upon the grounds that even though it was not offered against him, it was all remote, and irrelevant, not to be binding, and that the relation of such conversation would bring before the jury matters which could not but be highly prejudicial; which said objection was overruled. Exception allowed.

The defendant Salich objected upon the ground that it would not tend to prove or disprove any issue in the case and would be inflammatory and prejudicial, which said objection was overruled. Exception allowed.

- A. Commander Davis, when Salich came in the office, I was introduced to Salich, and Commander Rochefort was introduced to Salich.
  - Q. A little louder so we can all hear you. [68]
- A. In the course of the conversation Lieutenant-Commander Rochefort told Salich what the office did and the—
  - Q. (Interrupting) Wait. Relate what he said.
- A. Mr. Rochefort said that everything that Salich did in the office, or outside of the office, was confidential, and that at no time was he to reveal anything that occurred in the office to anyone on the outside, and in addition, he further instructed Salich that he was not to tell any member of hisfamily or his wife.
- Q. Did he tell him what position he was being employed in, or what position he was to fill?
- A. He told him he was being employed as an investigator.
  - Q. For what?
  - A. For the Naval Intelligence.

Q. And did Mr. Salich say anything during that conversation, as you recall?

A. Mr. Salich asked whether or not he could obtain an identification card or some badge with which to work with on the outside.

Q. Did he state what type of a badge he wanted?

A. To identify himself with the Naval Intelligence or some other badge which would give him authority.

Q. What was told to him?

A. He said—Mr. Rochefort said—that the Navy, or the officers of the Naval Intelligence, did not issue any passes of any kind or badges or identification cards.

Q. Did he have any conversation with him at that time as to whether or not he was to disclose his identity, as you recall?

A. Mr. Rochefort told him that he would at that time not reveal that he was working for the Naval Intelligence.

[69]

By Mr. Neukom:

Q. Do you recall to your best recollection the date in August of 1936 that this took place?

A. 15th of August, 1938.

Q. That is your best recollection?

A. That is right.

The defendant Gorin moved the Court to strike the whole of the conversation related by the witness between Commander Rochefort, Commander Davis, and Mr. Salich, upon the grounds theretofore urged in objection to the questions covering such conversation, and on the further grounds that the instructions which Commander Rochefort gave Salich and what he designated as secret and confidential, was incompetent and immaterial. Objection was overruled. Exception allowed.

The defendant Salich moved to strike the whole of said conversation on the grounds that the evidence was too remote and had no tendency to prove or disprove the issues in the case. Objection overruled. Exception allowed.

#### VIII

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney propounded to Witness Roy Hanna:

Q. Will you recall the substance of the conversation, as you heard it, and in doing so, explain to the jury who was doing the talking.

To which question defendant Gorin objected on the ground that it was hearsay as to him, and that extra-judicial statements or declarations of Salich are incompetent, irrelevant and immaterial. That there has been no proof of conspiracy, and that corpus delicti had not been established. Objection overruled. Exception allowed. [70]

Defendant Salich objected on the ground that there has been no proof of a corpus delicti, no proof of the conspiracy, and that the extra-judicial statements of Salich were not to be used against him at that time. Objection overruled. Exception allowed.

# (Continued direct examination)

Salich told Commander Rochefort that he had contacted Mr. Gorin, and that Mr. Gorin had offered him certain moneys.

He asked Commander Rochefort whether or not he should continue to contact Mr. Gorin.

Commander Rochefort told Salich not to contact Gorin more and that if he did he would have Stanley with him. I know Mr. Salich and Mr. Stanley. Mr. Stanley is likewise an investigator with the same office with which Mr. Salich was working. The conversation I related took place, as I recall, in March of 1938.

# VIII-A.

The Court erred in admitting the evidence of the Witness Roy Hanna on behalf of the plaintiff as follows:

## (Direct Examination continued)

Q. At any time after September of 1937, were you ever present in the office of the Naval Intelligence, San Pedro. when the defendant Salich was likewise present and the small safe to which the Commander of the Office had access, was slightly ajar? No answer either yes or no.

To which objection was made by the defendant Salich upon the ground that it was immaterial and irrelevant and not within the terms of the indictment or bill of particulars. Objection overruled, exception allowed.

- Q. Now, do you recall approximately what date this was?
- A. I would say it was either September or October. I couldn't give you the date.
  - Q, Of 1937? [71] A. 1937.
- Q. Was anyone else present in the room where this safe was besides Mr. Salich?
  - A. I was there with Mr. Salich.
- Q. And did you leave the room for any length of time.
  - A. I would say about four or five minutes.
- Q. And when you returned, was anyone else present in the room besides Mr. Salich?
  - A. No one.
- Q. Did you observe who was in the room when you returned?

  A. Yes, Salich was there.
  - Q. Nobody else? A. Nobody else.
- Q. Did you observe the condition of the safe, the small safe, when you returned?
  - A. The door was opened much wider.
- Q. Did you have any conversation with Mr. Salich with respect to that situation?
  - A. I did not mention it to him.

Defendant Salich moved to strike the testimony of said witness last objected to on the ground that there was no proof that Mr. Salich took anything out of the safe and no proof that his actions were other than as behooved a member of the Naval Intelligence Service in the course of the duties, and that the whole line of testimony was highly prejudicial. Motion denied. Exception allowed.

#### IX.

The Court erred in denying the motion of defendant Salich to strike the testimony of Witness Roy Hanna as follows:

# (Direct Examination continued)

Q. At any time after September of 1937, were you ever present in the office of the Naval Intelligence, San Pedro, when [72] the defendant Salich was likewise present and the small safe to which the Commander of the Office had access, was slightly ajar? Now answer either yes or no.

To which objection was made by the defendant Salich upon the ground that it was immaterial and irrelevant and not within the terms of the indictment or bill of particulars. Objection overruled. Exception allowed.

- Q. Now, do you recall approximately what date this was?
- A. I would say it was either September or October. I couldn't give you the date. [73]
  - Q. Of 1937? A. 1937.
- Q. Was anyone else present in the room where this safe was besides Mr. Salich?
  - A. I was there with Mr. Salich.
- Q. And did you leave the room for any length of time?
  - A. I would say about four or five minutes.
- Q. And when you returned, was anyone else present in the room besides Mr. Salich?
  - A. No one.
- Q. Did you observe who was in the room when you returned?

  A. Yes, Salich was there.

- Q. Nobody else? A. Nobody else.
- Q. Did you observe the condition of the safe, the small safe, when you returned?
  - A. The door was opened much wider.
- Q. Did you have any conversation with Mr. Salich with respect to that situation?
  - A. I did not mention it to him.

Defendant Salich moved to strike the testimony of said witness last objected to on the ground that there was no proof that Mr. Salich took anything out of the safe and no proof that his actions were other than as behooved a member of the Naval Intelligence Service in the course of the duties, and that the whole line of testimony was highly prejudicial. Motion denied. Exception allowed.

## (Cross-Examination)

By Mr. Stone.

telligence Service Office in San Pedro, myself, Mr. Stanley and Mr. Salich all had keys [74] to the office. That was our headquarters for our work as members of the United States Naval Intelligence Service. They had orders to report certain days to the office. If the office was locked for any reason, they were expected to use their keys to go in for that purpose. The office was kept unlocked from eight o'clock in the morning to four o'clock in the afternoon all days of the week, Monday, inclusive of Friday. They were not expected to come in on Saturday morning and type up a report. The orders never included that they had to report Saturday

unless they were so specifically told. There were no orders that I know of that they were not to go to the office on Saturday. The small safe was unlocked when Mr. Rochefort or the officer in charge. Mr. Clayborne, was present. I don't rememeber what day of the week it was on the occasion to which I testified the small safe was open. It was around, September, October, of 1937. That was in the period when Commander Rochefort was in charge of the station. During the two years that Mr. Salich was connected with the Naval Intelligence Service the safe was opened every time the officer in charge came in and opened it. This may have happened three or four times a day, or it may have happened once a day. Commander Rochefort was not present at the time the occurrence to which I testified happened. He was out at the time. He only opened it and stepped out of the office when I was present. That had happened before. I did not say anything to Mr. Salich about this occurrence. I believe Mr. Salich had opened the safe. At that time I believed he had gone to the safe. What he was doing there, I don't know. The safe door was about four or five inches ajar when I left the room. on the occasion. I did not examine the safe when I returned to the room. Mr. Salich remained in the room until about 10:30 or about 11:00 o'clock, about an hour and a half after I returned. Shortly .. after I returned to the room, Commander Rochefort returned. He did not examine the safe in my presence. [75]

Mr. Stone: Your Honor, I should like again to move to strike all testimony of Mr. Hanna with regard to this safe. The matter, as shwon on cross examination, Mr. Hanna didn't examine the safe. He had no reason to believe that Mr. Salich had taken anything from the safe. Hε said nothing to Mr. Salich about it at the time. There is no possible admission which can be drawn from such testimony, if that was the purpose of the Government in making it, and I believe that it is highly prejudicial and should be stricken, and the jury should be admonished to disregard it.

The Court: The motion will be denied, and in fairness to counsel, possibly the attitude of the Court should be explained in the presence of the jury.

The objections made, gentlemen, seem to the Court to go to the weight of the evidence rather than as to its materiality to the case. It is but an isolated item in possibly a long chain of proof. It certainly is no evidence that any papers were taken out of that desk. It apparently is not being introduced with that purpose in mind. It may seem to you to be evidence for the purpose of illustration to indicate the accessibility of these papers to the Defendant Salich.

The motion to strike will be denied and an exception allowed.

#### XI.

The Court erred in admitting evidence on behalf of the plaintiff as follows:

Question of plaintiff's attorney propounded to Witness G. B. Dierst.

Q. Now, Mr. Dierst, referring to Government's Exhibit No. 4 for identification, when was that written up?

A. That was written up on the evening of December 10, 1938. [76]

Q. And these conversations that you have told us about, and also the identification of these various reports, was that at the same time, before or after?

A. They all occurred on December 10th.

Q. At that time, as I understand it, you made a rough memorandum? <sup>4</sup> A. That is correct.

Q. And those are the memorandums that you have been using to refresh your recollection?

A. That is right.

We first made a pencil memorandum and after I had the pencil memorandum made up, or I took down the notes from time to time during the conversation, then I went over it and rewrote the notes in ink while Mr. Salich was over at another desk at a typewriter preparing the statement. After he got through with the statement, or after I had my notes prepared, he came over and asked me to review them. We sat down together and reviewed them, and he made certain corrections in the notes with his own handwriting.

Q. Calling your attention again to Exhibit 4 for identification, is that memorandum in your own handwriting?

A. This is a memorandum in my own handwriting with certain corrections made in it in the handwriting of Mr. Salich.

Mr. Harrison: At this time, if the Court please, we desire to offer this statement in evidence.

The Court: Gentlemen of the jury, it is stipulated between the parties that the Government's Exhibit No. 4 for identification may be now admitted in evidence as to the defendant Salich, but is not applicable to the defendant Mikhail Gorin, and you are instructed to disregard this exhibit in considering the matter as to the two defendants Gorin.

[77]

Whereupon the document referred to was received in evidence and marked "Government's Exhibit No. 4."

Mr. Stone: I think the record should show that we do not consider that Mr. Dierst's statement refers to matters with respect to the national defense, and for that reason I would like to have the record show an objection in that regard.

The Court: The record may show the objection. It is overruled and an exception allowed.

Whereupon the witness read the statement, Government's Exhibit No. 4, the same reading as follows:

## GOVERNMENT'S EXHIBIT No. 4

Notes of G. V. Dierst of statements made by Hafis Salich, 12/10/38, and reviewed and corrected by Salich, signed G. V. Dierst. While subject was on Berkeley, Calif. P. D., he was acquainted with one O. R. Griffin who was a former member of Berkeley P. D. and Griffin knew Mr. Troyanovsky, the Russian Ambassador to U. S. Griffin thru

Troyanovsky met Nicholai Aliavdin, Vice Consul for Russia. Griffin introduced Salich to Aliavdin, this being in the latter part of 1935. During the latter part of 1935 and first part of 1936 Salich saw Aliavdin once or twice. Salich came to L. A. in August of 1936 to take present job. Some time during winter of 1936-1937 Aliavdin looked up Salich in L. A. and saw him 3 or 4 times when Aliavdin approached Salich and requested information concerning Jap activities or the Jap Consulate and was turned down. At this time Salich advised Rochefort of Aliavdin's request.

In Dec. '37 or Jan. a '38 Salich met Mikhail Gorin, Gorin having a letter of introduction from Aliavdin. Gorin brought this letter to Salich's apartment at 3333-W. 4th St. and Salich, being out, Gorin left word with Salich's wife that he desired to see Salich.

The following night Salich contacted Gorin at his residence, ([78] 451 South Ardmore St. and they went out together. While they were out; Salich's wife, with whom Salich had been having trouble, came to Gorin's house, forced her way in and searched the front room for Salich, Mrs. Gorin being the only person home. Gorin told Salich that they had investigated his folks in Russia and found that they were alright and that they felt that Salich would be able to help them. He stated that they wanted information about the Japs and that Russia was friendly with U. S. and did not want to do anything that would in any way jeopardize that relationship. Salich told him that no informa-

tion he could obtain about the Japanese would help them, but Gorin explained that there was always a possibility that in event of trouble between the Russians and Japanese that such information might be of assistance and they were interested in. Japanese and their international activities. They had 2 or 3 meetings and about this time Salich was having marital trouble, he and his wife separating, so Gorin said he would help him out and gave him \$200 more or less as a gift and to help him out. Thereafter from time to time Gorin gave Salich sums of money, generally about \$200 at a time and totalling about \$1700, the next to last payment, being \$500 in Nov. of 1938 when Salich made a property settlement agreement with his wife. He had been paying her \$125 per month and the amount received from Gorin just about took care of the alimony.

Information concerning Japanese activities were furnished to Gorin from time to time, and it was specifically understood between Salich and Gorin that no information would be furnished concerning U.S. It being felt by Salich and Gorin that the Japanese activities were a matter in which U.S. and Russia were both interested and that exchange of information about them would mutually benefit U.S. and Russia.

Salich and Gorin had no specific meeting place, but would [79] get together about every 3 to 5 weeks at places mutually agreed upon. Sometimes Salich would phone Gorin and vice versa. The information was turned over to Gorin both orally

3

and written and Gorin would take notes on oral information.

Timofeev was vice consul until recently but Salich never met him and never had any dealings with him.

Gorin told Salich on one occasion that he had had an American employed, but had fired him because he was unreliable, and he also said that a similar check was being made on Japanese activities in San Francisco and Salich saw part of a typewritten report about Ted Yasunaga, or Yasukawa or Yasaqawa and something about the subject being a graduate of Galileo H. S.

Gorin always claimed that his superiors felt that there was more in the navy intelligence about the Japs than they were getting and particularly about who the real Japanese spies in U.S. were, but Salich insisted that Gorin was getting all the information available concerning the Japs. Gorin also stated at one time that Moscow was dissatisfied with the information they were getting and felt that Safich could get more information. He also stated that they felt that something of real interest to the Russians might furn up about the Japs in the future. He also inquired at one time if Salich had any Jap informants who could be developed to furnish Gorin information, but Salich advised him that it would put his informants in a ticklish position and refused to give him any such Japs. Gorin at one time said that money was no object and said he would even pay double what Salich was getting another time Gorin told

Salich that if he, Salich, got any extended leave, that he, Gorin, would see that Salich got a trip to Russia, advising Salich that the Russian Government as a part of their propaganda program paid for trips to Russia of members of certain organizations and that it could be arranged for Salich to make one of these trips. [80]

Salich stated that when Gorin first approached him that he, Salich, had talked the matter over with Rochefort and Rochefort told him to see what Gorin had to offer. He told Rochefort at the time of the offer that Gorin had made.

Salich when first approached told Gorin that it was out of the question for he, Salich, to do any independent investigation and that all information furn shed would have to come as a result of his investigation with the Navy Intelligence. Gorin also told Salich that Moscow felt he, Salich, was not doing anything wrong as there was a mutual cause in obtaining information about the Japs.

In going over the various reports of the Navy Intelligence records with Salich, he stated that he furnished information from the following reports to Gorin on their last meeting which was the day after Thanksgiving last, on Nov. 25, 1938.

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#1145
#1139
#1133
#1130
#1129
#1116 (This report was not furnished.)
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He asked Gorin about Captain Bakesy and Gorin said he knew Capt. Bakesy as he had come to Gorin's San Francisco office. Salich asked Gorin of Bakesy, because he suspected that Bakesy may have been employed by him.

In going over other reports in the Navy Intelligence files Salich made the following comments about the following numbered reports.

#833. He gave the information in this report to Gorin because it concerned the Japanese and if there was a communist among [81] the Japs, then Gorin could contact him direct for information and this would be working towards a common interest. This report was given to Gorin in writing.

#841. He gave this information to Gorin, but does not know whether it was written or oral.

#843. Denies knowing anything about this or giving information to Gorin.

#849. Gave names of Simons and Rayburn to Gorin and asked him whether these parties had been working for Gorin. Gorin had mentioned a Simons in San Diego that was supposed to be studying Japanese and Salich mentioned these names to see if Rayburn and Simons were working for Gorin and doing sabotage work.

#854. No specific recollection about this but that he might have mentioned it to Gorin. Salich states that they had talked about the article in Liberty Magazine discussing Japanese terpedo boats which were supposed to have been converted into

fishing boats.

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#859. Salich did not furnish Gorin with the address of Simons.

#861. No specific recollection.

#889. Salich states he did not remember furnishing Shively's name to Gorin.

#897. Salich gave this information to Gorin, but does not know whether it was written or oral.

#967. Salich merely gave Gorin the name of Hilda Cary and some of her personal history, such as the fact she had been married to a Mexican, also her address. It was then up to Gorin to make a contact with her if he so desired. (May have given a written report or copy).

#973. Salich gave Gorin information about Louis Ritchie as a possible Japanese spy, because he was capable of doing anything [82] for the Japanese and might play both sides.

#1066. Salich and Gorin had agreed that if they ran into anything against the U. S., that they would work together and so Salich asked Gorin about Hillman and Kovac and Gorin said the Russians had no known communists working and that this was all a lie.

Other reports mentioned by Salich to Gorin were as follows:

#1152-no comment.

#1110—the following comment appears after that: "Told to Gorin orally, but did not mention ships.

#1104-mentioned to Gorin.

#1088. Told about Herman Schwinn—when this was mentioned to Gorin he told Salich to lay off the Germans as Moscow was not interested and that this was covered by a separate division.

#1081. Mentioned to Gorin, may have given written report.

·#1070.

#518 is information received from Gorin.

#403 is information received from Gorin.

Salich feels that at least \$100 of the money he received from Gorin was spent on navy business.

(End of Government's Exhibit No. 4.)

#### XII.

The Court erred in admitting evidence in behalf of plaintiff as follows:

Question of Plaintiff's attorney propounded to Witness C. V. Dierst:

Q. You stated that while you were making up this memorandum that Mr. Salich sat down to a typewriter and wrote up something?

A. He did.

Q. And after he had completed the typewriting, did he hand you anything? [83] A. He did.

Mr. Harrison: I will ask this to be marked for identification, Mr. Clerk.

(The document referred to was marked Government's Exhibit No. 7 for identification".)

# By Mr. Harrison:

Q. I am now showing you Government's Exhibit No. 7 for identification, and ask you if you recognize that document.

- A. (Examining Document) I do.
- Q. And what is it?
- A. This is the typewritten statement which Mr. Salich typewrote while I was preparing the notes which I just read.
  - Q. And did Mr. Salich sign that document?
  - A. He signed it the following day.
  - Q. And in whose presence.
- A. He signed it in the presence of Mr. Hanson and myself and Mr. Miller.

I might say, in connection with that, he had already signed the statement on Sunday morning prior to my arrival at the office; that I went in to where he was and asked him whether he had signed the statement, showed it to him, and he told me that he had, and acknowledged that that was his signature on the bottom, and it was his signed statement, that he had voluntarily signed it.

Mr. Harrison: If the Court please, we now offer this in evidence against the defendant Salich only.

Mr. Stone: May the record show the same objection in regard to this statement, your honor, that we made in connection with the other one; that it does not concern matters affecting the national defense?

The Court: The objection will be entertained, overruled, and an exception allowed.

The document referred to was received in evidence and [84] marked "Government's Exhibit No. 7.

Whereupon Mr. Harrison read said exhibit to the jury, said Government's Exhibit No. 7 reading as follows:

# GOVERNMENT'S EXHIBIT No. 7

The following is account of the various events that led up to this case and my sincere and honest story as to what transpired during my relationship with Gorin:

Gorin came to my house at 3333 W. 4th Street, Los Angeles during the fall of 1937 and talked to my wife Velma through the apartment house switchboard. He stated to her that he had a letter for me from Aliavdin (I guess that is how it is pronounced).

Eventually I contacted Gorin at his house one evening after having had a violent quarrel with my wife. She threatened that she would follow me, so Gorin and I left his house immediately to go somewhere for a cocktail. Velma arrived there shortly thereafter and created quite a scene with Gorin's wife, demanding entrance and looking for me. According to Gorin as told him by his wife, Velma nudged her way in the house and acted quite obstreperously. During that meeting Gorin stated that his government was very much interested in obtaining information concerning the Japanese in this area and emphasized that they were quite friendly to USA and that they wanted no information of any kind that would be considered against the best interests of this country. He suggested that,

if necessary, he was quite prepared to pay money to which I answered negatively explaining that I would not consider it ethical or right to accept any money. He asked me to think the matter over, and that we would meet again for lunch sometime soon. Accordingly we had lunch together at Perino's one day the outcome of which was that I again insisted that I could not consider working for him and accept any money but that if at any time I came into possession of information that concerned Japanese activity against the USSR, I would let him know.

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In the meantime, after many violent squabbles and quarrels with my wife we separated and in February 1938 I moved to my present address. I agreed to pay her \$125 per month, \$30 of which I was to pay for her car. I was also to deduct her gasoline expense from her allowance. During the next month or two I realized that I was finding it difficult to live on \$125 which was my share. During one of the later contacts that I had with Gorin (these contacts were of purely social nature, meeting for cocktails or lunches) I happened to mention to him about my plight with respect to keeping up with the payments to my wife of \$125 a month? wher upon he stated that he realized the difficulty that I had in living on my reduced salary and asked why didn't I let him help me with those payments. At this point he reiterated his previous assurance that they had nothing against this country, that this country was friendly to them and they

friendly to us and that the only thing they were interested in getting was information concerning the Japanese. To my argument that nothing that I could possibly get for them concerning the local Japanese would be of any value to Russia, he answered that there was always a possibility of some local angle having to do with possible Japanese espionage in Russia. He again pointed out that the Japanese were our common potential enemy and it was as much in our interests to see that someone else also exerted some eff. against them.

I saw that there was reason to his argument and agreed to furnish him with information that came to my hands in which I thought he would be interested in. This information was mostly concerning the Japanese. On one or two items of information that I furnished and that did not involve any Japanese I gave verbal explanation to Mr. Dierst. Sometime in the past few months Gorin asked me how I stood with my wife and when informed that I still kept on paying her the \$125 per month he offered that I give her \$500 and get rid of the annoying payments once and for all. He did this, but in the [86] settlement with my wife I discovered the \$500 did not cover the entire settlement sum including the bills which she had incurred and which I agreed to pay, I borrowed additional \$250 from California Bank on Terminal Island. A friend acted as a co-signer on this note. Altogether I received \$1,700 from Gorin, \$200 of which is still in my possession. d Monsey may an anode a

556

After two or three months of my relationship with Gorin he told me that his superior officers. were extremely dissatisfied with information I was : furnishing. They said to him that what they were getting was way below their expectations. I said to Gorin then that I regretted that there was nothing more I could do, but that inasmuch as I could not satisfy them perhaps it would be better if they stopped furnishing me with money. He said that I shouldn't feel that way about it and that sooner or later there might fall into my hands some information concerning the Japanese which might be of real interest to them, and that he did not wish to discourage me at all. Just as a bythought, at one time during my association with him, I told him that I appreciated his financial assistance and that when my trouble with my wife was over I intended to repay him.

Conscientiously and honestly I did not think that my actions, aside from being highly unethical, were inimical to the best interests of the United States, to which country I am extremely grateful for what it did for me and which country's citizenship I value. This was understood during my conversations with Gorin when I told him repeatedly that I felt very patriotic about USA and that under no circumstances would I do anything against this country. His reply to this was that he is authorized to assure me again that they realized my patriotic feeling for USA and that there was nothing for me to worry about in that respect because they enter-

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tained no other feeling but that of friendship and respect for this country and that they certainly did not intend to do anything against USA. He stated that [87] after all the USA permitted them to send their aviation and other engineers to study in American plants and brought out other reasons why they had no desire to work against us here.

I sincerely state that at no time did I furnish Gorin any information which in my opinion would harm this country; on the contrary, I saw some reason to Gorin's argument that we had common cause, and by helping them I would also be indirectly helping our own cause. At no time was I ever in a position to obtain anything of secret nature about the U. S. Navy, nor about the secret armament, air raft plants, etc., nor did I have any intention of turning such information over to Gorin should I have been in a position to obtain such information. I therefore do not conscientiously feet that I have violated any of the provisions of our espionage laws, but feel keenly disgrace of violation of ethics, that is, divulging to other sources information as innocuous as I felt it was. I likewise admit my weakness in answering the temptation of financial assistance offered me to assist me in my domestic difficulty. I might add that during one of my attendances of Naval Reserve Officers affairs I came into possession of some confidential mimeographed Naval publication, which was distributed to everyone present, which never left my possession, and which I had no intention of turning over to anyone. I respectfully ask that it be noted that at no time did I feel I was doing anything criminal against the country that adopted me and have every desire to cooperate (and have done so) with the officers investigating this place.

(Then in longhand): Above is given voluntarily and signed without fear of intimidation and without any promise of reward or immunity.

# HAFIS SALICH

December 11, 1938. [88]

#### · Witnesses:

## J. H. HANSON,

Special Agent, F. B. I.

S. R. MILLER,

Special Agent, F. B. I.

G. V. DIERST,

Special Agent, F. B. I. 810 South Spring Street Los Angeles, California.

# XIII.

The Court erred in denying motion of defendant Salich to strike the testimony of the Witness John H. Hanson as follows:

Q. Now, at this time, was there any discussion in any of this conversation, or did Mr. Salich refer to any statute or discuss with you any statute?

A. Yes. Mr. Salich stated that he did not believe that he had done anything wrong in furnishing this information to Mr. Gorin. He said that he had carefully studied the United States Espionage Statute and that he was positive in his own mind that he had not violated that law and, in fact, on December 11, when he was still in the office, and naturally he was wondering what was going to happen to him, what—whether the United States Attorney was to authorize prosecution, I gave him the United States Code Book, the Code Annotated, and he read over the Statute himself. There was one particular clause in there that impressed itself on his mind. He thought possibly because of that particular wording that he might have done something.

Q. Was it a book similar to the one I have in my hand (indicating)?

A. It was a large book.

Q. A large book? A. Yes.

Q. Do you recall, offhand, what statute he read over in your presence? [89]

A. No. All I can say is the espionage statute. He said the wording in the statute of "detriment to the United States," might be the reason why the United States Attorney would authorize prosecution.

Q. Now, was this conversation that you had on or before the time he had typed or signed a written instrument?

A. All of the conversation that I have related, excepting about reading the statute book, was prior to the time that he had written up his own statement. He started writing that late on the afternoon and evening of December 10. He actually looked at the code book on the 11th.

- Q. But had he had any discussion with you will respect to the statute prior to the time that he actually read the code book itself? A. Yes.
  - Q. What date?
  - A. That was on December 10.
- Q. Will you explain to the jury as to what statute books, what code books, were referred to whether it was a Naval Code book, or whether it was the United States Statute?
- A. The book that I referred to contains the United States Statutes.
- Q. And the one that Mr. Salich on December 10, 1938, told you that he had read the statute pertaining to espionage, did that pertain to the United States Statutes?
  - A. The United States Statutes, that is right.
- Q. You had a discussion of the general nature of those statutes? A. Yes.

Mr. Pacht: I now move to strike the whole of the conversation just related by the witness with Mr. Salich on behalf of the [90] defendants Gorin, and each of them, upon the ground that this conversation occurred after the termination of the alleged conspiracy, constitutes hearsay as to these moving defendants, and further, that there has been no proof of any conspiracy, and when your Honor has ruled upon that, I would like to make a specific motion as to a particular part of this conversation.

The Court: The motion to strike will be denied.

Mr. Pacht: May I be allowed an exception? The Court: An exception.

Mr. Pacht: I now move to strike that part of the conversation related by Mr. Hanson as to what was done and said by Mr. Hanson and by Mr. Salich with respect to the United States Annotated Code, and/or the Espionage Statute, his interpretation of it, or what he thought with relation to that statute.

The Court: Gentlemen of the jury, as to that portion of the testimony of this witness having to do with his examination of the United States Code or the United States Statute on this particular occasion, you shall disregard insofar as the defendants Gorin are concerned.

Mr. Stone: May I join in that, your Honor, on behalf of the defendant Salich, upon the ground that it does not constitute an admission and has no tendency to prove or disprove any issue in this case?

The Court: As to the defendant Salich the motion will be denied, it being in the Court's mind one of the elements having to, possibly, with intent. An exception is allowed.

#### XIV.

The Court erred in denying the motion of defendant Salich to strike the testimony of Elias M. Zacharias as follows:

- Q. Commander, have you had under your supervision the defendant Salich as investigator? [91]
  - A. I have.
- Q. And what were his duties as such investigator?

A. To collect information or data on individuals suspected of obtaining or attempting to obtain information relating to the Naval establishment. Information on individuals engaging in or making preparations to engage in sabotage of the Naval establishment, or activities directly connected with the defense efforts of that Naval establishment. Individuals engaged in or attempting to engage in subversion of personnel, looking to the nullification of the defense efforts of the Naval establishment, or actual immobilization thereof.

Mr. Pacht: I move to strike out the whole of the answer of the witness upon the ground that the answer as given by the witness has added to, and is an attempt to add to, the provisions of the Espionage Act, as set forth in Sections 31, 32, and 34, Title 50.

The Congress itself has made no such specifications in the statute, has not given such a broad-definition of the term "national defense" as Commander Zacharias in his answer has indicated, and that the opinion and conclusion of Commander Zacharias as to the purpose of the Act and as to its provisions and as to the work which any agent or employee working under Commander Zacharias is incompetent, irrelevant and immaterial for any purpose in this case.

Mr. Stone: May I join in that objection, your Honor.

The Court: The motions on behalf of all of the defendants will be denied.

Gentlemen: The law in this case you will take from the Court. Counsel for the Government or the defendants, or the witness, or anybody else, has no power to read anything into the statutes of the United States. At the proper time and under the proper circumstances, in instructing this jury, the Court will define the term "national defense," and will give you explicit instructions as to [92] the law involved. This testimony is being taken, not to instruct you as to what the law is, but simply as to the fact of what the men were directed by their superior officer to do, what the scope of their activities was. It is merely a fact.

The Court: Exception to all concerned.

#### XV.

The Court erred in admitting evidence of the Witness Elias M. Zacharias on behalf of the plaintiff as follows:

There was a time when I talked in the presence of Mr. Salich relative to his duties and the functions of the office. I recall distinctly two occasions. The first was at a meeting in the office of the Assistant District Intelligence Officer at San Pedro, attended by individuals connected with the Naval Intelligence Service, among them Mr. Salich, shortly after I assumed my duties as District Intelligence Officer. There was present besides Mr. Salich, Lt. Claiborne, Mr. Stanley and tertain members of the Intelligence Service. Mr. Hanna was not present.

Will you state what you said at that time, concerning the nature of the work that your investigators were doing?

Mr. Stone: To which I object, your Honor, upon the ground that it has no tendency to prove or disprove any of the issues involved in this action.

The Court: The objection will be overruled. Exception allowed.

The Witness: At that time I recounted the situation surrounding the espionage trial in New York recently completed. I told of the activities connected with that case, with which I was directly connected four years previously, and I emphasized to that group the vulnerability of information for the purpose of impressing upon them the necessity for properly safeguarding information. It was at that [93] time that I stassed the necessity of keeping from anyone information developed, and pointed out that human beings have the frailty of desiring to tell what they had done, or what they had accomplished. And it was on that occasion, to impress this fact upon them, that I made the remark, after stating that they should not even tell things of this nature to their wives or families, that I said, "You must get your glory out of the accomplishment and," as has already been testified in the court. I did make the statement that "intelligence work, like virtue, is its own reward."

(Witness continues) I have given the substance of the first statement I made in the presence of Mr.

Salich.

#### XVI.

The Court erred in denying the motions of defendant Salich to strike the testimony of Elias M. Zacharias given on behalf of plaintiff as follows:

There was a time when I talked in the presence of Mr. Salich relative to his duties and the functions of the office. I recall distinctly two occasions. The first was at a meeting in the office of the Assistant District Intelligence Officer at San Pedro, attended by individuals connected with the Naval Intelligence Service, among them Mr. Salich, shortly after I assumed my duties as District Intelligence Officer. There was present besides Mr. Salich; Lt. Claiborne, Mr. Stanley and certain members, of the Intelligence Service. Mr. Hanna was not present.

Q. Will you state what you said at that time, concerning the nature of the work that your investigators were doing?

Mr. Stone: To which I object, your Honor, upon the ground that it has no tendency to prove or disprove any of the issues involved in this action.

The Court: The objection will be overruled. Exception allowed. [94]

The Witness: At that time I recounted the situation surrounding the espionage trial in New York recently completed. I told of the activities connected with that case, with which I was directly connected four years previously, and I emphasized to that group the vulnerability of information for the purpose of impressing upon them the necessity

for properly safeguarding information. It was at that time that I stressed the necessity of keeping from anyone information developed, and pointed out that human beings have the frailty of desiring to tell what they had done, or what they had accomplished. And it was on that occasion, to impress this fact upon them, that I made the remark, after stating that they should not even tell things of this nature to their wives or families, that I said, "You must get your glory out of the accomplishment and," as has already been testified in the court, I did make the statement that "intelligence work, like virtue, is its own reward."

(Witness continues) I have given the substance of the first statement I made in the presence of Mr. Salich.

Mr. Pacht: If the Court please, I move to strike this testimony particularly because the Commander has brought into his answer a prosecution under the Espionage Act and has brought before this jury a prosecution under the Espionage Act which he says took place in New York that has injected into this case issues not presented by the indictment and is prejudicial to the defendants, so that the jury is bound to speculate or may speculate upon the outcome of that case in New York.

Whereupon the defendants moved to strike said testimony upon the grounds that the answer is opinion testimony upon a subject upon which opinion testimony is not permitted, and upon the ground that the duties, the powers and the manner of functioning of the office of Naval Intelligence is a matter which is subject to and [95] governed by written regulations of the Navy Department.

Motion denied. Exceptions allowed.

#### XVII.

The Court erred in admitting in evidence document known as report #833 and designated Government's Exhibit No. 5(a) to which offer objection was made on behalf of the defendant Salich upon the following grounds:

- 1. That no proper foundation has been laid for the introduction of said writing, for the reason that it has not been shown, and there is no evidence to prove, that said report, or any part thereof, relates to or is connected with the national defense of the United States.
- 2. That said report on its face shows that it is not a part of and is not connected with and does not relate to the national defense of the United States as that term is used in Sections 31, 32 and 34 of the Espionage Act.
- 3. That said report is not an instrument, writing, or document connected with or relating to the national defense as that term is used in Sections 31, 32 and 34 of the Espionage Act.
- 4. That said report on its face shows that it is but a communication by one officer of the United States Navy to another officer of said Navy reporting certain information acquired by said reporting officer concerning the acts and conduct

of certain persons in the United States, and that it is not connected with nor does it relate to the national defense of the United States as that term is used in the Espionage Act.

5. That said report shows on its face that it is but the conclusion and opinion of the reporting officer relative to the acts and conduct of a certain individual or individuals and the transmission of said reporting officer to another officer of such conclusions and opinion, and that it is not anything connected with [96] the national defense or relating to the national defense as that term is used in the Espionage Act under which this prosecution is being had.

6. That the introduction of said report in evidence would have the effect of making the judgment, opinion and conclusion of an officer of the United States Navy a standard whereby to determine the conduct of the defendants and other persons dealing with the United States Navy and permitting said officer to in effect legislate and create criminal statute.

7. That the introduction in evidence of said report would be to give to a regulation of the United States Navy relative to information acquired by its officers and employees the effect of a criminal statute, all in violation of the Fifth and Sixth Amendments of the Constitution of the United States.

Said objection was overruled and exception allowed.

Said Exhibit No. 5(a) is in words and figures as follows:

# GOVERNMENT'S EXHIBIT No. 5(a)

#833

Memo for DIO

Subject: Activities of Japanese.

Enclosure: (A) Memo of DIO dated 31 August 1938:

- 1. Very little information could be obtained by this office on the subject mentioned in Enclosure (A). Three American-born Japanese, George Ohaski, Paul Nakadate and George Suzuki, all resigned very recently from the J. A. C. L., because they were accused of indulging in communist activities. Dr. Miki Nakadate, elder brother of Paul Nakadate, is still in Los Angeles and is very strong in the Los Angeles branch of the J. A. C. L. According to the informant there is news in Los Angeles relative to any trouble in San Diego, and the Rafu Shimpo stated, the only information they had [97] was of the resignation of the three above mentioned people from the J. A. C. L., due to communist activities.
- 2. This office is of the belief that the informant could discover more concerning this matter but he lacks the energy and the ingenuity to get it.

H. deB. CLAIBORNE.

## XVIII.

The Court erred in admitting in evidence a document known as report #841 and designated Government's Exhibit No. 5(b) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 260 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is herein set forth in full.

#### XIX.

The Court erred in admitting in evidence a document known as report #889 and designated Gorernment's Exhibit No. 5(c) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 261 of this printed record.] [98]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

The Court erred in admitting in evidence a document known as report No. 1145 and designated Government's Exhibit No. 5(d), to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 262 of this printed record.1

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of this Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth

in full.

# XXI.

The Court erred in admitting in evidence a document known as report No. 1139 and designated Government's Exhibit No. 5(e) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 263 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore [99] made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXII.

The Court erred in admitting in evidence a document known as report #1133 and designated Government's Exhibit No. 5(f) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 263 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXIII.

The Court erred in admitting in evidence a document, known as report No. 1132 and designated
Government's Exhibit No. 5(g) to which offer objection was made on behalf of the defendant Salich
upon the grounds hereinabove set forth in Assignment. No. XVII which said objection was overruled and exception allowed. Said exhibit is set
forth in words and figures in the Bill of Exceptions
heretofore filed to which reference is hereby made
and said exhibit is herein incorporated by such
reference. [Set forth at page 264 of this printed
record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXIV.

The Court erred in admitting in evidence a document known as report #1130 and designated Government's Exhibit No. 5(h) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such refer-

ence. [Set forth at page 264 of this printed record.] Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXV.

The Court erred in admitting in evidence a document known as report. No. 1129 and designated Government's Exhibit No. 5(i) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 265 of this printed record.]

Said designation of said grounds of objection

and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXVI.

The Court erred in admitting in evidence a document known as report #897 and designated Government's Exhibit No. 5(k) to which [101] offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 266 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXVII.

The Court erred in admitting in evidence a document known as report #1104 and designated Government's Exhibit No. 5(1) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 268 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXVIII.

The Court erred in admitting in evidence a document known as report No. 1081 and designated Government's Exhibit No. 5(m) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which [102] said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 269 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXIX.

The Court erred in admitting in evidence a document known as report #570 and designated Government's Exhibit No. 6(a) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and

exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 270 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation herefore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXX.

The Coart erred in admitting in evidence a document known as report No. 560 and designated Government's Exhibit No. 6(b) to which offer objection was made on behalf of the defendant Salich upon grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed [103] to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 271 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXXI.

The Court erred in admitting in evidence a document known as report #548 and designated Government's Exhibit No. 6(c) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII, which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 274 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXXII.

The Court erred in admitting in evidence a document known as report #546 and designated Government's Exhibit No. 6(d) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference.

ence. [Set forth at page 275 of this printed record.]
[104]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXXIII.

The Court erred in admitting in evidence a document known as report No. 536 and designated Government's Exhibit No. 6(e) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set 10rth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference.

[Set forth at page 275 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

## XXXIV.

The Court erred in admitting in evidence a document known as report #535 and designated Government's Exhibit No. 6(f) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 276 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed and by order of the Honorable Circuit Court of Appeals heretofore [105] made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXXV.

The Court erred in admitting in evidence a document known as report #534 and designated Government's Exhibit 6(g) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 277 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXXVI.

The Court erred in admitting in evidence a document known as report #532 and designated Government's Exhibit No. 6(h) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 277 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full. [106]

#### XXXVII.

The Court erred in admitting in evidence a document known as report #530 and designated Government's Exhibit No. 6(i) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled

and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 277 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXXVIII

The Court erred in admitting in evidence a document known as report #529 and designated Government's Exhibit 6(j) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 278 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXXIX

The Court erred in admitting in evidence a document known as report #528 and designated Government's Exhibit 6(k) to which [107] offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 278 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

XXXX

The Court erred in admitting in evidence a document known as report #525 and designated Government's Exhibit No. 6(1) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 279 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXXXI

The Court erred in admitting in evidence a document known as report #519 and designated Government's Exhibit No. 6(m) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set [108] forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 280 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXXXII

The Court erred in admitting in evidence a document known as report #514 and designated Government's Exhibit No. 6(n) to which offer objection

was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 280 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honerable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXXXIII

The Court erred in admitting in evidence a document known as report #507 and designated Government's Exhibit No. 6(o) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 281 of this printed record.] [109]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

## XXXXIV

The Court erred in admitting in evidence a document known as report #505 and designated Government's Exhibit 6(p) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 284 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# XXXXX

The Court erred in admitting in evidence a document known as report #504 and designated Government's Exhibit 6(q) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words

and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 284 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and [110] by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

## XXXXVI

The Court erred in admitting in evidence a document known as report #503 and designated Government's Exhibit 6(r) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference [Set forth at page 285 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

## XXXXVII

The Court erred in admitting in evidence a document known as report #495 and designated Government's Exhibit No. 6(s) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 287 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

[111]

#### XXXXVIII.

The Court erred in admitting in evidence a document known as report #489 and designated Government's Exhibit No. 6(t) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said

exhibit is herein incorporated by such reference.
[Set forth at page 288 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### XXXXIX.

The Court erred in admitting in evidence a document known as report #482 and designated Government's Exhibit No. 6(u) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 289 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

L

The Court erred in admitting in evidence a document known as report #480 and designated Government's Exhibit No. 6(v) to which [112] offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 289 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### II

The Court erred in admitting in evidence a document known as report #479 and designated Government's Exhibit 6(w) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 291 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### LII

The Court erred in admitting in evidence a document known as report #477 and designated Government's Exhibit No. 6(x) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said [113] objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 291 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

## LIII.

The Court erred in admitting in evidence a document known as report #472 and designated Government's Exhibit No. 6(y) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words

and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 291 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# LIV.

The Court erred in admitting in evidence a document known as report #469 and designated Government's Exhibit No. 6(z) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore [114] filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 292 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

#### LV.

The Court erred in admitting in evidence a document known as report #466 and designated Government's Exhibit No. 6(aa) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 292 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed; and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# LVI.

The Court erred in admitting in evidence a document known as report #465 and designated Government's Exhibit No. 6(bb) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and

said, exhibit is herein incorporated by such reference. [Set forth at page 293 of this printed record.]
[115]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

# LVII.

The Court-erred in admitting in evidence a document known as report #439 and designated Government's Exhibit No. 6(cc) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 293 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Sircuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

### LVIII.

The Court erred in admitting in eyidence a document known as report #435 and designated Government's Exhibit No. 6(dd) to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by such reference. [Set forth at page 294 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, [116] and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

## LVIX.

The Court erred in admitting in Evidence a document designated Government's Exhibit No. 3 to which offer objection was made on behalf of the defendant Salich upon the grounds hereinabove set forth in Assignment No. XVII which said objection was overruled and exception allowed. Said exhibit is set forth in words and figures in the Bill of Exceptions heretofore filed to which reference is hereby made and said exhibit is herein incorporated by

such reference. [Set forth at page 295 of this printed record.]

Said designation of said grounds of objection and of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th day of June, 1939, which said stipulation and order is hereinafter set forth in full.

### LX.

The Court erred in admitting evidence of Witness Henry deB. Claiborne on behalf of the plaintiff as follows:

I had a conversation with Mr. Salich relative to the manner in which he would be paid, which occurred approximately the 30th of June when I drew his first check. I am fairly certain Mr. Stanley was present.

Question by attorney for plaintiff:

Q. What was said relative to the method of payment at that time?

The defendant Salich objected upon the ground that it does not prove or disprove any allegation in the indictment. Objection overruled. Exception allowed.

A. I do not recall the exact words, but, in substance, I stated that the object of this was not to connect the investigators directly with the office or with my name. [117]

#### LXI.

The Court erred in admitting evidence of the Witness H. deB. Claiborne on behalf of the plaintiff as follows:

I was present at a conversation where the defendant Salich was also present, and where the confidential nature of the work was mentioned. That was at the meetings of the group held at San Pedro, and I recall a particular meeting some time in the summer of 1938. There were present Commander Zacharias, Mr. Stanley, Mr. Salich and several United States Naval Reserve Officers:

Q. Now what did you, if anything, say at that time relative to the confidential nature of the work?

To which the defendant Salich objected upon the ground that it has no tendency to prove or disprove any of the issues involved in this action and upon the further ground that it is opinion testimony upon a subject upon which opinion testimony is not permitted and upon the ground that the duties, the powers, and the manner of functioning of the Office of Naval Intelligence is a matter which is subject to and governed by the written regulations of the Navy Department. The objection was overruled and exception allowed.

A. I particularly recall reading several paragraphs from a book called "The Reserve Officers Manual." One of these paragraphs warned any officer from writing or publishing anything concerning the Navy without first submitting it to the Navy Department.

At the end of this paragraph was a reference to the United States Navy Regulations, paragraph 113. That reference was read, but the paragraph of the United States Navy Regulations itself was not read.

- Q. Was anything else said about the confidential nature of the work by you at that time when Salich was present?
- A. After that paragraph from the Reserve Officers Manual was read, Commander Zacharias took up the point of the confidential nature of the work.

  [118]
- Q. And that is what was covered by his testimony in this case?

  A. That is correct.
- Q. Is that the only occasion where you were present in which there was any discussion concerning the confidential nature of the work of the Naval Intelligence at which Salich was present?

A. No.

Q. When did such an occurrence-

A. (Interrupting) At practically every meeting of the Intelligence group some mention was made of the confidential nature of the work.

### LXII.

The Court erred in denying the motion of defendant Salich for a directed verdict which said motion was made at the close of the Government's case and was in words and figures as follows:

The defendant Hafis Salich respectfully moves this Honorable Court to direct a verdict of acquittal in favor of the defendant Hafis Salich upon each and every count of the indictment, and upon the following grounds and each of them:

### First Count

- (1) The first count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.
- (2) The evidence introduced on behalf of the Government on the first count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.
- (3) The evidence introduced by the Government fails to show that the information obtained concerns or affects the national defense.
- (4) The evidence fails to show that the defendant Hafis [119] Salich obtained the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (5) The evidence fails to show that the defendant Hafis Salich obtained the said information with the purpose of obtaining information affecting the national defense.

## Second Count

(1) The second count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.

- Government on the second count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.
- (3) The evidence introduced by the Government fails to show that the information transmitted and communicated concerns or affects the national defense.
- (4) The evidence fails to show that the defendant Hafis Salich transmitted and communicated the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (5) The evidence fails to show that the defendant Hafis Salich transmitted and communicated the said information with the purpose of transmitting and communicating information affecting the national defense.

## Third Count

- (1) The third count of the indictment does not state facts sufficient to constitute a penal offense against the United States by the defendant Hafis Salich.
- (2) The evidence introduced on behalf of the Government [120] is insufficient to support a conviction of the defendant Hafis Salich on the third count of the indictment.

- (3) The evidence fails to show an agreement or conspiracy between Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin to communicate or transmit, one to the other, information which affects the national defense.
- (4) The evidence fails to show that the defendants Hafis Salich, Mikhail Nicholas Gorin, and Natasha Gorin conspired to transmit or communicate information, one to the other, with intent or reason to believe that the said information was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republies.

#### LXIII.

The Court erred in admitting in evidence on behalf of the plaintiff, Government's Exhibit No. 8 to the introduction of which defendant Salich objected upon the ground that it was immaterial and did not tend to prove or disprove any issue in the case. Objection was overruled and exception allowed. Said exhibit is in words and figures as follows:

August 19, 1938

Mr. Hafis Salich Berkeley Police Department Berkeley, California

## Dear Salich:

I talked with Commander H. C. Davis, Intelligence Officer, Headquarters, 11th Naval District, this morning (he had been away for a few days)

and he accepted my recommendation of you for the position which he has in the Los Angeles area. The salary will be \$250 per month and \$1000 per year expenses. You may have the job just as soon as you can report to him for work—the sooner the better. [121]

I am writing a letter to Chief Greening and am enclosing a copy for your information. Please do not tell anyone in Berkeley excepting the Chief and the City Manager as any information that might connect your leave of absence with me or the Government would probably destroy your usefulness.

I suggest that you make arrangements as soon as possible to see Commander Davis at the 11th Naval District Headquarters, Third Floor, as soon as convenient. I am leaving on vacation for two weeks this coming Friday, so if I am not here, go to him directly. You can usually see him any morning, and most afternoons excepting Saturday or Sunday.

With best of luck, I am, sincerely, GEORGE A. BRERETON.

# LXIX.

The Court erred in allowing the objection of counsel for plaintiff to the following question asked by counsel for defendant Salich of the Witness Hafis Salich as follows:

Q. Did you at any time discuss with Mr. Aliavdin your work with the Naval Intelligence Service or the fact that you were connected with it? To which question the Government objected on the ground that it was hearsay and did not tend to prove any of the issues in the case.

Objection sustained. Exception allowed.

#### LXX.

The Court erred in refusing to admit evidence on behalf of the defendant Salich designated as defendant Salich's and Gorin's Exhibit A, being an article in Ken magazine, Vol. 1, No. 1, April 7, 1938, on Page 40 to which offer the Government objected upon the ground that it was incompetent, irrelevant, and immaterial [122] and did not tend to establish any of the issues in the case. Said objection was sustained and exception allowed. Said designation of said exhibit is adopted by appellant by stipulation heretofore signed, and by order of the Honorable Circuit Court of Appeals heretofore made and filed on the 9th of June, 1939, which said stipulation and order is hereinafter set forth in full.

# LXXI.

The Court erred in denying the motion of defendant Salich for a directed verdict as to each and every one of the counts of the indictment upon the grounds assigned and given and stated to the Court in the motion for directed verdict made at the close of the Government's case and as hereinabove set forth in Assignment of Errors No. LXII, and which said motion was denied and exception allowed.

# LXXII.

The Court erred in refusing to give to the jury the following Instruction XII requested by the defendant Salich.

"The fourth element which must be proved to you beyond a reasonable doubt for a conviction of the defendant Hafis Salich on the first count of the indictment is that the defendant Hafis Salich obtained the information mentioned in Instruction IX, if you find that he did so, with intent or reason to believe that that information was to be used to the injury of the United States and the advantage of the Union of Soviet Socialist Republics. (1) This intent the Government must prove to you as a fact; but intent can be proved by facts and acts fromwhich it may be inferred. If the inferences from proven facts and acts are as consistent with an innocent as with a guilty intent, the point is not proved. But on the other hand, if they exclude every hypothesis except that of guilt, the point is proved. In considering these facts and acts; [123] and the inferences drawn from them, you should donsider whether or not there are any circumstances brought out in the evidence in this case which are consistent with some intent other than that this information be used to the injury of the United States and the benefit of the Union of Soviet Socialist Republics. You should consider likewise the character of the information here in questionwhether or not it is susceptible to use by the Union

of Soviet Socialist Republics in a manner injurious to the United States; whether or not the defendant Hafis Salich knew facts from which he concluded, or reasonably should have concluded, that this information could be used by the Union of Soviet Socialist Republics in a manner which would injure the defense of this nation in time of war.

(2) While it is a fundamental rule that men are presumed to intend the natural consequences of their acts, yet this presumption cannot prevail in the face of positive proof of a specific intent different from that required by the statute. When such evidence is present, it devolves upon the Government to present affirmative evidence of the existence of the required unlawful intent."

# LXXIII.

The Court erred in refusing to give to the jury the following Instruction X requested by the defendant Salich:

The second element which must be proved to you beyond a reasonable doubt for a conviction of the defendant Hafis Salich on the first count of the indictment is that the information obtained by him, if you find that he obtained any, relates to the armed defense of the United States so closely that the ordinary reasonable man would immediately perceive that its disclosure would directly endanger the armed defense of this nation in time of war. In determining this question you should consider

the content of that information; whether or not it relates to any military works of the United States, such as navy yards, or forts, or munitions [124] centers, or any property which is prepared for military use in time of war. You should likewise consider the possible uses to which such information could be put by another nation in making an armed attack on this country; whether or not the possession of such information by a foreign nation would endanger the success of our armed forces in time of war in their task of defending our shores; and whether or not the fact of such danger from the disclosure of that information would be immediately apparent to the ordinary reasonable man.

# LXXIV.

The Court erred as to the prejudice of defendant Salich in instructing the jury as follows, to-wit:

You are instructed that the law requires only that the Government prove either an intent or a reason to believe that the information was to be used either to the injury of the United States or to the advantage of the foreign nation—in this case, the Union of Soviet Socialist Republics. Hence, it will be sufficient to satisfy the requirements of the law if, for example, the Government proves to you beyond a reasonable doubt that both Salich and Gorin had reason to believe that the information disclosed was to be used to the advantage of Russia. In such case, you would be entitled to find that each

defendant had the criminal intent specified in the statute.

The intent or purpose of a person is from its very nature a matter which has to be proved by circumstantial evidence. It is obvious that it is impossible to examine into the mind of the person while he is committing an alleged crime to ascertain just what was his intent. It is also true that if a person is about to commit a crime, or during the course of committing a crime, he avoids as far as possible revealing what his intentions are. The explanation which the defendant makes or what was his intent even though quite plausible is not conclusive as to just what was his intent.

This intent the Government must prove to you as a fact; but intent can be proved by facts and acts from which it may be inferred. If the inferences from proven facts and acts are as consistent with an innocent as with a guilty intent, the point is not .. proved. But on the other hand, if they exclude every hypothesis except that of guilt, the point is proved. In considering these facts and acts, and the inferences drawn from them, you should [126] consider whether or not there are any circumstances brought out in the evidence in this case which are consistent with some intent other than that this information be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. You should consider likewise the character of the information here

in question—whether or not it is susceptible to use by the Union of Soviet Socialist Republics, and whether or not the Defendant Hafis Salich knew facts from which he concluded, or reasonably should have concluded, that this information could advantageously be used by the Union of Soviet Socialist Republics.

In this connection you are not to be governed solely by any explanations given by any defendant as to his intent, but you shall look to all of the evidence, circumstantial or otherwise, in arriving at what was the intent or purpose of said defendant as charged in the indictment. I further charge you that the defendant's interpretation of what he understood the law to be with respect to whether or not his acts were contrary to the statute is not conclusive. It is not what the defendant believed his acts amounted to so far as his guilt or innocence is concerned, but you are to consider all of the evidence and the law as I instruct you as to whether or not the acts of any defendant may or may not have violated the statutes governing the trial of this case.

An honest but mistaken belief on the part of any defendant that what he was doing was lawful, even though unethical, will not exonerate him, if in fact you find that the intent of such defendant was actually the unlawful one contemplated by the statute.

While it is a fundamental rule that men are presumed to intend the natural consequences of their

acts, yet this presumption cannot prevail in the face of positive proof of a specific intent different from that required by the statute. When such evidence [127] is present, it devolves upon the Government to present affirmative evidence of the existence of the required unlawful intent.

You cannot surmise or speculate that the defendants intended and had reason to believe that the information was to be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. The intent or reason to believe that the information was to be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics is a fact charged which must be proven to the same extent as any other fact in the case.

Hence, if you find from the evidence that the defendant Hafis Salich and Mikhail Gorin exchanged certain information relative to certain activities of Japanese in the United States or elsewhere, but that there was no intent and no reason to believe on the part of either of said defendants in so exchanging information that there would result an injury to the United States or advantage to the Union of Soviet Socialist Republics, then such acts and conduct on the part of said defendants did not constitute an offense as charged in the indictment.

Defendant Salich excepted to the giving of said portion of said charge upon the ground that said Instruction failed correctly to state the law in regard to said issue of intent as stated in defendant Salich's requested Instruction No. 12 hereinabove set forth in Assignment of Errors # LXXII.

### LXXV.

The Court erred to the prejudice of defendant Salich in instructing the jury as follows, to-wit:

You must be satisfied beyond a reasonable doubt that the information alleged to have been disclosed did in fact relate to the national defense, as that term will now be defined for you by the Court. [128]

The statutes covering this type of case do not require to establish the crime of espionage that the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation. The document need not in fact be vitally important or actually injurious. The document or information must be, however, connected with or related to the national defense.

The mere fact that a report may refer to an individual or his activities does not mean that the report concerning such person is connected with the national defense.

The mere fact that a report has been made by the United States Naval Intelligence, or one of its operatives, or commander, or any officer in charge thereof, concerning an individual or his activities, does not in and of itself mean that such report relates to the national defense.

The character of each report must be determined by considering the nature of the contents of that report, and whether or not the contents related to the national defense.

You are instructed that the term "national defense" includes all mafters directly and reasonably connected with the defense of our nation against its enemies. The first lines of defense naturally are the men, the ships and the guns of the navy, the men, the planes and the guns of the air corps, and the men, forts and guns of the army. Behind these—but none the less necessary if the army and navy are to be kept in the field in wartime or well prepared in peacetime—are those places and things which are essential to the storage of reserves, the inter-communication of armed forces, the transportation of war supplies, the reconditioning of warworn materials and men, and the manufacture of war supplies.

As you will note, the statute specifically mentions the places and things connected with or comprising the first line of defense when it mentions vessels, aircraft, works of defense, fort [129] or battery and torpedo stations. You will note, also, that the statute specifically mentions by name certain other places or things relating to what we may call the secondary line of national defense. Thus some at least of the storage of reserves of men and materials is ordinarily done at naval stations, submarine bases, coaling stations, dock yards, arsenals and camps; all of which are specifically designated in the statute. The inter-communication of armed forces

is carried on at telephone, telegraph, wireless or signal stations, which the statute designates. The transportation of war supplies is accomplished by canals and railroads, similarily designated. The reconditioning of war-worn materials and men is accomplished, among other places, at naval yards and naval stations and the manufacturing of war supplies is accomplished at factories and mines. The general words, "building or office" are also mentioned.

You are instructed in the first place that for purposes of prosecution under these statutes, the information, documents, plans, maps, etc., connected with these places or things must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation. Thus a map of a mine-field would be a document directly affecting the usefulness of that mine-field, for if such map should fall into the hands of another country the ships of that power might easily pass through the mine-field. Thus its usefulness as an instrument of national defense would be nullified as against that nation.

Similarly, even information that representatives or agents of some foreign power were in possession of such a map or plan or the map or plan of a shore-battery, might likewise directly concern the usefulness of that mine-field or that battery as an instrument of defense. Manifestly it might have to be rebuilt or changed. Such information might be es-

sential to any successful naval strategy in that area

during wartime. [130]

You are instructed that in the second place the information, documents or notes must relate to those angles or phases of the instrumentality, place or thing which relates to the defense of our nation; thus if a place or thing has one use in peacetime and another use in wartime, you are to distinguish between information relating to the one or the other use. Thus an auto factory may make automobiles in time of peace and tanks in wartime. Information relating to its output of automobiles might not be connected with the national defense; information relating to the output of tanks might be related to the national defense.

Or, again, an air photo, from 2,000 feet altitude of terrain surrounding a baftery might contain many things unimportant to the national defense, yet from a military standpoint it might, be intimately connected with the efficiency of that battery, since from such photo an enemy might deduce the strong and the weak points in the position of such battery, the angle of fire of its guns, the size of its gun emplacement, and various other facts of military importance.

The information, document or note might relate to physical substances or instruments of warfare. either of our own forces or those of another power. This might include guns, gas masks, helmets, or any other part of army or navy equipment. Such information, document or note might conceivably concern a chemical whose peculiar properties might enable it to eat through the plates of a warship or destroy communication cables, or cables connecting mines with their moorings.

The information, document or note might also contain statistics or figures relating to some place intimately, connected with the national defense. For example: The document might contain the exact draught of every vessel in the United States Navy. This [131] information would enable the enemy to know precisely into how shallow waters each vessel in our fleet might venture.

The information, document or not might also relate to the possession of such information by another nation and as such might also come within the possible scope of this statute. Thus a document narrating the fact that a certain foreign power has definite information as to the exact draught of our vessels might be vital to the military and naval defense of our country. For from the standpoint of military or naval strategy it might not only be dangerous to us for a foreign power to know our weaknesses and our limitations, but it might also be dangerous to us when such a foreign power knows that we know that they know of our limitations.

You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability

of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions."

Defendant Salich excepted to the giving of said pation of said charge upon the ground that said Instruction failed correctly to state the law in regard to said issue of intent as stated in defendant Salich's requested Instruction No. 10 hereinabove set forth in Assignment of Errors No. LXXIII.

# LXXVI.

The Court erred in denying the motion of defendant Hafis Salich for a new trial or for a judgment notwithstanding the verdict, which said motion is in words and figures as follows:

Defendant Hasis Salich respectfully moves this Honorable Court for judgment notwithstanding the verdict, or in the alternative, for a new trial, upon each and every count of the indictment and upon the following grounds and each of them:

## First Count

o (1) The First Count of the indictment fails to state facts sufficient to constitute a penal offense by

the defendant Hafis Salich against the United States.

- (2) The evidence introduced on behalf of the Government on the First Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.
- (3) The verdict is against the weight of the evidence.
- (4) The evidence introduced by the Government fails to show that the information obtained concerns or affects the national defense.
- (5) The evidence fails to show that the defendant Hafis Salich obtained the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.
- (6) The evidence fails to show that the defendant Hafis Salich obtained the said information with the purpose of obtaining information affecting the national defense.
- (7) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich.
- (8) The Court erred in its definition of the term "national defense" in the instructions given to the jury. [133]
- (9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.
- (10) The Court erred in admitting in evident Government's Exhibit 5a.

- (11) The Court erred in admitting in evidence Government's Exhibit 5b.
- (12) The Court erred in admitting in evidence Government's Exhibit 5c.
- (13) The Court erred in admitting in evidence Government's Exhibit 5d.
- (14) The Court erred in admitting in evidence Government's Exhibit 5e.
- (15) The Court erred in admitting in evidence Government's Exhibit 5f.
- (16) The Court erred in admitting in evidence Governments Exhibit 5g.
- (17) The Court erred in admitting in evidence Government's Exhibit oh.
- (18) The Court erred in admitting in evidence Government's Exhibit 5i.
- (19) The Court erred in admitting in evidence Governments Exhibit 5j.
- (20) The Court erred in admitting in evidence Government's Exhibit 5k.
- (21) The Court erred in admitting in evidence. Government's Exhibit 51.
- (22) The Court erred in admitting in evidence Government's Exhibit 5m.
- (23) The Court erred in admitting in evidence Government's Exhibit 6a. [134]
- (24) The Court erred in admitting in evidence Government's Exhibit 6b.
- (25) The Court erred in admitting in evidence Government's Exhibit 6c.

- (26) The Court erred in admitting in evidence Government's Exhibit 6d.
- (27) The Court erred in admitting in evidence Government's Exhibit 6e.
- (28) The Court erred in admitting in evidence Government's Exhibit 6f.
- (29) The Court erred in admitting in evidence Government's Exhibit 6g.
- (30) The Court erred in admitting in evidence Government's Exhibit 6h.
- (31) The Court erred in admitting in evidence Government's Exhibit 6i.
- (32) The Court erred in admitting in evidence Government's Exhibit 6j.
- (33) The Court erred in admitting in evidence Government's Exhibit 6k
- (34) The Court erred in admitting in evidence Government's Exhibit 61.
- (35) The Court erred in admitting in evidence Government's Exhibit 6m.
- (36) The Court erred in admitting in evidence Government's Exhibit 6n.
- (37) The Court erred in admitting in evidence Government's Exhibit 6o.
- (38) The Court erred in admitting in evidence Government's Exhibit 6p. [135]
- (39) The Court erred in admitting in evidence Government's Exhibit 6q.
- (40) The Court erred in admitting in evidence Government's Exhibit 6r.

- (41) The Court erred in admitting in evidence Government's Exhibit 6s.
- (42) The Court erred in admitting in evidence Government's Exhibit 6t.
- (43) The Court erred in admitting in evidence Government's Exhibit 6u.
- (44) The Court erred in admitting in evidence Government's Exhibit 6v.
- (45) The Court erred in admitting in evidence. Government's Exhibit 6w.
- (46) The Court erred in admitting in evidence Government's Exhibit 6x.
- (47) The Court erred in admitting in evidence Government's Exhibit 6y.
- (48) The Court erred in admitting in evidence Government's Exhibit 6z.
- (49) The Court erred in admitting in evidence Government's Exhibit 6aa.
- (50) The Court erred in admitting in evidence Government's Exhibit 6bb.
- (51) The Court erred in admitting in evidence Government's Exhibit 6cc.
- (52) Rice Court erred in admitting in evidence Government's Exhibit 6dd.
- (33) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich. [136]
- (54) The Court erred in declining to give Instruction No. XI requested on behalf, of Hafis Salich.

- (55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.
- (56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri deB. Claiborne.
- (57) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

## Second Count -

- (1) The Second Count of the indictment fails to state facts sufficient to constitute a penal offense by the defendant Hafis Salich against the United States.
- (2) The evidence introduced on behalf of the Government on the Second Count of the indictment is insufficient to support a conviction of the defendant Häfis Salich.
- (3) The verdict is against the weight of the evidence.
- (4) The evidence introduced by the Government fails to show that the information communicated and transmitted concerns or affects the national defense.
- (5) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

- (6) The evidence fails to show that the defendant Hafis Salich communicated and transmitted the said information with the purpose of communicating and transmitting information affecting the national deefnse.
- (7) The Court erred in denying the motion for directed verdict presented on behalf of defendant Hafis Salich. [137]
  - (8) The Court erred in its definition of the term "national defense" in the instructions given to the jury.
  - (9) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for identification.
  - (10) The Court erred in admitting in evidence Government's Exhibit 5a.
  - (11) The Court erred in admitting in evidence Government's Exhibit 5b.
  - (12) The Court erred in admitting in evidence Government's Exhibit 5c.
  - (13) The Court erred in admitting in evidence Government's Exhibit 5d.
  - (14) The Court erred in admitting in evidence Government's Exhibit 5e.
  - (15) The Court erred in admitting in evidence Government's Exhibit 5f.
  - (16) The Court erred in admitting in evidence Government's Exhibit 5g.
  - (17) The Court erred in admitting in evidence Government's Exhibit 5h.

- (18) The Court erred in admitting in evidence Government's Exhibit 5i.
- (19) The Court erred in admitting in evidence Government's Exhibit 5j.
- (20) The Court erred in admitting in evidence Government's Exhibit 5k.
- (21) The Court erred in admitting in evidence Government's Exhibit 51.
- (22) The Court erred in admitting in evidence Government's Exhibit 5m. [138]
- (23) The Court erred in admitting in evidence Government's Exhibit 6a.
- (24) The Court erred in admitting in evidence Government's Exhibit 6b.
- Government's Exhibit 6c.
- (26) The Court erred in admitting in evidence Government's Exhibit 6d.
- (27). The Court erred in admitting in evidence. Government's Exhibit 6e.
- (28) The Court erred in admitting in evidence Government's Exhibit 6f.
- (29) The Court erred in admitting in evidence Government's Exhibit 6g.
- (30) The Court erred in admitting in evidence Government's Exhibit 6h.
- (31) The Court erred in admitting in evidence Government's Exhibit 6i.
- (32) The Court erred in admitting in evidence Government's Exhibit 6j.

- (33) The Court erred in admitting in evidence Government's Exhibit 6k.
- (34) The Court erred in admitting in evidence Government's Exhibit 61.
- (35) The Court erred in admitting in evidence Government's Exhibit 6m.
- (36) The Court erred in admitting in evidence Government's Exhibit 6n.
- (37) The Court erred in admitting in evidence Government's Exhibit 60. [139]
- (38) The Court erred in admitting in evidence Government's Exhibit 6p.
- (39) The Court erred in admitting in evidence Government's Exhibit 6q.
- (40) The Court erred in admitting in evidence Government's Exhibit 6r.
- (41) The Court erred in admitting in evidence Government's Exhibit 6s.
- (42) The Court erred in admitting in evidence Government's Exhibit 6t.
- (43) The Court erred in admitting in evidence Government's Exhibit 6u.
- (44) The Court erred in admitting in evidence Government's Exhibit 6v.
- (45) The Court erred in admitting in evidence Government's Exhibit 6w.
- (46) The Court erred in admitting in evidence Government's Exhibit 6x.
- (47) The Court erred in admitting in evidence Government's Exhibit 6y.
- (48) The Court erred in admitting in evidence—Government's Exhibit 6z,

- (49) The Court erred in admitting in evidence Government's Exhibit 6aa.
  - (50) The Court erred in admitting in evidence. Government's Exhibit 6bb.
    - (51) The Court erred in admitting in evidence Government's Exhibit 6cc.
  - (52) .The Court erred in admitting in evidence Government's Exhibit 6dd. [140]
  - (53) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich.
  - (54) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.
  - (55) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.
  - (56) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri deB. Claiborne.
  - (57) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

## Third Count

- (1) The Third Count of the indictment failed to state facts sufficients to constitute a penal offense by the defendant Hafis Salich against the United States.
- (2) The evidence introduced on behalf of the Government on the Third Count of the indictment is insufficient to support a conviction of the defendant Hafis Salich.

(3) The verdict is against the weight of the evidence.

(4). The information introduced by the Government fails to show that the information conspired to be transmitted concerns or affects the national defense.

(5) The evidence fails to show that the defendant Hafis Salich conspired to transmit the said information with intent or reason to believe that it was to be used to the injury of the United States or the advantage of the Union of Soviet Socialist Republics.

(6) The Court erred in denying the motion for directed verdict presented on behalf of defendant

Hafis Salich.

(7) The Court erred in its definition of the term "national defense" in the instructions given to the jury. [141]

(8) The Court erred in refusing to admit in evidence defendant's proffered Exhibit "a" for iden-

tification.

(9) The Court erred in admitting in evidence a Government's Exhibit 5a.

(10) The Court erred in admitting in evidence Government's Exhibit 5b.

(11) The Court erred in admitting in evidence Government's Exhibit 5c.

(12) The Court erred in admitting in evidence Government's Exhibit 5d.

(13) The Court erred in admitting in evidence Government's Exhibit 5e.

- (14) The Court erred in admitting in evidence Government's Exhibit 5f.
- (15) The Court erred in admitting in evidence Government's Exhibit 5g.
- (16) The Court erred in admitting in evidence Government's Exhibit 5h.
- (17) The Court erred in admitting in evidence Government's Exhibit 5i.
- (18) The Court erred in admitting in evidence Government's Exhibit 5j.
- (19) The Court erred in admitting in evidence Government's Exhibit 5k.
- (20) The Court erred in admitting in evidence Government's Exhibit 51.
- (21) The Court erred in admitting in evidence.
  Government's Exhibit 5m.
- (22) The Court erred in admitting in evidence Government's Exhibit 6a. [142]
- (23) The Court erred in admitting in evidence Government's Exhibit 6b.
- (24) The Court erred in admitting in evidence Government's Exhibit 6c.
- (25) The Court erred in admitting in evidence Government's Exhibit 6d.
- (26) The Court erred in admitting in evidence Government's Exhibit 6e.
- (27) The Court erred in admitting in evidence Government's Exhibit 6f.
- (28) The Court erred in admitting in evidence Government's Exhibit 6g.
- (29) The Court erred in admitting in evidence Government's Exhibit 6h.

(30) The Court erred in admitting in evidence Government's Exhibit 6i.

(31) The Court erred in admitting in evidence Government's Exhibit 6j,

(32) The Court erred in admitting in evidence Government's Exhibit 6k.

(33) The Court erred in admitting in evidence Government's Exhibit 61.

(34) The Court erred in admitting in evidence Government's Exhibit 6m.

(35) The Court erred in admitting in evidence Government's Exhibit 6n.

(36) The Court erred in admitting in evidence Government's Exhibit 60.

(37). The Court erred in admitting in evidence Government's Exhibit 6p. [143]

(38) The Court erred in admitting in evidence Government's Exhibit 6q.

(39) The Court erred in admitting in evidence Government's Exhibit 6r.

(40) The Court erred in admitting in evidence Government's Exhibit 6s.

(41) The Court erred in admitting in evidence Government's Exhibit 6t.

(42) The Court erred in admitting in evidence Government's Exhibit 6u.

(43) The Court erred in admitting in evidence Government's Exhibit 6v.

(44) The Court erred in admitting in evidence Government's Exhibit 6w.

4 (45) The Court erred in admitting in evidence Government's Exhibit 6x.

- (46) The Court erred in admitting in evidence Government's Exhibit 6y.
- (47) The Court erred in admitting in evidence Government's Exhibit 6z.
- (48) The Court erred in admitting in evidence Government's Exhibit 6aa.
- (49) The Court erred in admitting in evidence Government's Exhibit 6bb.
- (50) The Court erred in admitting in evidence Government's Exhibit 6cc.
- (51) The Court erred in admitting in evidence Government's Exhibit 6dd.
- (52) The Court erred in declining to give Instruction No. X requested on behalf of Hafis Salich. [144]
- (53) The Court erred in declining to give Instruction No. XI requested on behalf of Hafis Salich.
- (54) The Court erred in declining to give Instruction No. XII requested on behalf of Hafis Salich.
- (55) The Court erred in declining to require production of documents named in subpoena duces tecum served on Henri deB. Claiborne.
- (56) The Court erred in its definition of the term "with intent or reason to believe etc." in the instructions given to the jury.

WILLARD J. STONE, JR., Attorney for Hafis Salich. [145] Wherefore Hafis Salich, defendant and appellant in the above entitled cause, prays that this appeal may be allowed, that said judgment and sentence be reversed, and said defendant and appellant discharged from custody.

Dated: June 12, 1939.

WILLARD J. STONE, Jr., Attorney for defendant and appellant Hafis Salich.

[Endorsed]: Assignment of Errors. Filed June 12, 1939. [146]

# EXHIBIT "A"

(To Assignment of Errors of Defendant Gorin)
In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 9135

UNITED STATES OF AMERICA,
Plaintiff,

V8.

HAFIS SALICH and MIKAIL NICHOLAS GORIN,

Defendants.

### ORDER

Upon the attached stipulation of the parties, and good cause appearing;

It Is Ordered, that in the assignment of errors of the defendant Gorin, it will be sufficient to refer of exhibits appearing in the bill of exceptions, as to Government Exhibits 5b, 5c and 6a to 6dd inclusive without repeating said exhibits verbatim in said assignment of errors, and that there need be no repetition in the assignment of errors of grounds of objections urged to said exhibits except as set forth in the bill of exceptions by reference to the grounds urged as to Government Exhibit 5a.

Dated this 2nd day of June, 1939.

CURTIS D. WILBUR,

Senior United States

Circuit Judge.

[Endorsed]: Filed: June 2, 1939. Paul P. O'Brien, Clerk. [200]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS ON BEHALF OF DEFENDANT MIKHAIL NICHOLAS GORIN

Comes now Mikhaii Nicholas Gorin (hereinafter referred to as Defendant Gorin), one of the defendants in the above entitled cause, and in connection with his appeal herein, states that in the record and proceedings during the trial of the above entitled cause in said District Court, error has intervened to his prejudice, and makes the following Assignment of Errors, which he, said defendants avers occurred in the trial of the same cause, and upon which he will rely upon the prosecution of his appeal in the above entitled cause, to wit:

### T.

That the Trial Court exced in overruling and denying the Motion to Dismiss and Demurrer to the indictment in said cause, filed and presented on behalf of the said defendant Gorin, which said order and ruling were made by the Court on the 16th day of January, 1939.

#### II.

That the Court erred in denying the motion of the defendant Gorin, made at the conclusion of the opening statement of the United States Attorney to dismiss the indictment and direct a verdict of acquittal, upon the grounds then and there stated to the Court. (All as appears more specifically in Bill of Exceptions.) [154]

### III.

That the Court erred in denying the motion of the defendant Gorin to strike the following testimony of the witness Elias M. Zacharias, given on direct examination, as follows:

- "Q. Commander, have you lad under your supervision the defendant Salich as investigator?
  - "A. I have.
- "Q. And what were his duties as such investigator?
- "A. To collect information or data on individuals suspected of obtaining or attempting to obtain information relating to the Naval establishment. Information on individuals engaging in or making

preparations to engage in sabotage of the Naval establishment, or activities directly connected with the defense efforts of that Naval establishment. Individuals engaged in or attempting to engage in subversion of personnel, looking to the nullification of the defense efforts of the Naval establishment, or actual immobilization thereof.

"Mr. Pacht: I move to strike out the whole of the answer of the witness upon the ground that the answer as given by the witness has added to, and is an attempt to add to, the provisions of the Espionage Act, as set forth in Sections 31, 32 and 34, Title 50.

"The Congress itself has made no such specifications in the statute, has not given such a broad definition of the term "national defense" as Commander Zacharias in his answer has indicated, and that the opinion and conclusion of Commander Zacharias as to the purpose of the Act and as to its provisions and as to the work which any agent, or employee working under Commander Zacharias is incompetent, irrelevant and immaterial for any purpose in this case.

"Mr. Stone: May I join in that objection, your Honor? [155]

"The Court: The motions on behalf of all of the defendants will be denied.

Gentlemen: The law in this case you will take from the Court. Counsel for the Government or the defendants, or the witness, or anybody else, has no power to read anything into the statutes of the United States. At the proper time and under the proper circumstances, in instructing this jury, the Court will define the term "national defense" and will give you explicit instructions as to the law involved. This testimony is being taken, not to instruct you as to what the law is, but simply as to the fact of what the men were directed by their superior officer to do, what the scope of their activities was. It is merely a fact.

The Court: Exception to all concerned."

#### IV.

That the Court erred in overruling the objection of Defendant Gorin to the admission of the following testimony on the part of the witness Elias M. Zacharias:

"Q. Commander, when you mentioned the Naval establishment, what did you mean by that expression?

To which question defendant Gorin objected on the ground that it is specifically described in its relation to any violation of the Espionage Act and Section 81, Subdivision (a) of the Espionage Act, and that it called for the opinion and conclusion of the witness.

Objection overruled. Exception allowed.

The Witness: The Naval establishment are those enterprises necessary for the operation of the Navy in time of peace and in war. It comprises ships, airplanes, repair bases, operating bases, communication centers, ammunition depots, armament fac-

tories, Naval aircraft factories, fuel depots, and such correlated activities."

#### V.

That the Court erred in denying motion of the defendant [156] Gorin to strike the answer of the witness Elias M. Zacharias, given on direct examination, which answer of the witness is as follows:

"The witness: The Naval establishment are those enterprises necessary for the operation of the Navy in time of peace and in war. It comprises ships, airplanes, repair bases, operating bases, communication centers, ammunition depots, armament factories, Naval aircraft factories, fuel depots, and such correlated activities."

"Defendant Gorin moved to strike the whole of the answer of the witness upon the ground that under the guise of answering a question apparently calling for a statement of fact, the witness had given to the jury his interpretation of what the Naval establishment consisted and added a specification to the statute which was not contained therein, and that the answer of the witness was a conclusion and opinion upon matters defined by subject.

Motion denied. Exception allowed."

# VÌ.

That the Court erred in overruling the objection of the defendant Gorin to testimony of the witness Elias M. Zacharias, as follows:

"Q. Will you state what you said at that time, concerning the nature of the work that your investigators were doing?

Mr. Pacht: Pardon me-

Mr. Stone (interrupting): To which I object, your Honor, upon the ground that it has no tendency to prove or disprove any of the issues involved in this action.

The Court: The objection will be overruled. Exception allowed.

Mr. Harrison: I assume, if the Court please, that it is understood that this testimony is not binding upon either Mr. or Mrs. Gorin?

The Court: Yes. The Government states that it is offering this testimony only as binding upon the defendant Salich. The Gorins not being present on this occasion, they are not to be bound by anything that is revealed in connection with this conversation, and you are instructed to ignore the conversation in so far as the two defendants Gorin are concerned.

Mr. Pacht: Notwithstanding the statement of the District Attorney, as to who he is attempting to bind by this statement, I [157] nevertheless object, on behalf of the defendant Gorin, to the relation of the conversation, because the relation of it is, in our opinion, prejudicial, or would prove prejudicial, to these defendants, in that it will enlarge upon the provisions of the Espionage Act upon which this prosecution is being had, and read into it words and specifications therein present not con-

tained; and it is irrelevant to prove either a conspiracy or any of the allegations of the indictment, or any count thereof.

The Court: The objection is overruled.

Mr. Pacht: Exception.

The Witness: At that time I recounted the situation surrounding the espionage trial in New York recently completed. I told of the activities connected with that case, with which I was directly connected four years previously, and I emphasized to that group the vulnerability of information forthe purpose of impressing upon them the necessity for properly safeguarding information. It was at that time that I stressed the necessity of keeping from anyone information developed, and pointed out that human beings have the frailty of desiring to tell what they had done, or what they had accomplished. And it was on that occasion, to impress this fact upon them, that I made the remark, after stating that they should not even tell things of this nature to their wives or families, that I said, "You must get your glory out of the accomplishment" and, as has already been testified in the Court, I did make the statement that "intelligence work, like virtue, is its own reward". I have given the substance of the first statement I made in the presence of Mr. Salich."

## VII.

That the Court erred in denying the motion to strike the testimony of the witness Elias M. Zacharias, as follows:

"The Witness: At that time I recounted the situation surrounding the espionage trial in New York recently completed. I told of the activities connected with that case, with which I was directly connected four years previously, and I emphasized to that group the vulnerability of information for the purpose of impressing upon them the necessity for properly safeguarding information. It was at that time that I stressed the necessity of keeping from anyone information developed, and pointed out that human beings have the frailty of desiring to tell what they had done, or what they had accomplished. And it was on that occasion, to impress this fact upon them, that I made the remark, after stating that they should not even tell things of this nature to their wives or families, that I said, "You must get your glory out of the accomplishment". and, as has already been testified in the Court, I did make the statement that "intelligence work, like virtue, is its own reward'. I have given the substance of the first statement I made in the presence of Mr. Salich."

"Mr. Pacht: If the Court please, I move to strike this testimony particularly because the Commander has brought into his answer a prosecution under the Espionage Act and has brought before this jury a prosecution under the Espionage Act which he says took place in New York that has injected into this case issues not pre- [158] sented by the indictment and is prejudicial to the defendants, so that the jury is bound to speculate or may

speculate upon the outcome of that case in New York.

Mr. Stone: I have a separate objection, a motion to strike upon the ground that the answer is opinion testimony upon a subject upon which opinion testimony is not permitted.

The Court: The motions will both be denied.

Gentlemen of the jury, this witness is simply testifying as to what he told Mr. Salich and others at this conference. What he said may conceivably be true. It may conceivably be false. It is conceivable that he might have told the men that the moon was made of green cheese. It is not offered for the purpose of proving the truth or falsity of those statements but is offered for the purpose of showing what was told to this defendant at that particular time. You are not to acquire any prejudice of any sort by virtue of any of these statements, particularly as to the defendants Gorin who were not present during that conversation.

Exceptions allowed.

# VIII.

That the Court erred in failing and refusing to grant a mistrial of the said cause, upon the application of the defendant Gorin for and because of the statement and testimony of the witness Elias M. Zacharias, and for acts and conduct in connection therewith, all as follows:

"Q. And what was said at that time relative to the nature of the work of the Naval Intelligence or the nature of the work of its investigators in

Mr. Pacht: To which we make the same objections as noted in support of our objection to previous conversation; they do not prove any allegation in the indictment, and the other grounds asserted.

The Court: My understanding is that it is not claimed the Gorins were present at this conversation? [159]

Mr. Harrison: It is not claimed they were present, if the Court please, and we are taking exactly the same position on this conversation as we did with the previous one.

The Court: Gentlemen of the jury, the Government states that they are offering this testimony as applicable only to the defendant Salich, and that it is not binding upon or intended to be binding upon the defendants Gorin, and you are instructed to ignore the substance of the conversation insofar as it has to do with the defendants Gorin.

Mr. Stone: May the record show an objection, your Honor, on behalf of the defendant Salich upon the grounds already stated?

The Court: The objections will be overruled and an exception allowed to all defendants.

# By Mr. Harrison:

- Q. You may proceed, Commander.
- A. I outlined to them the subversive activities which I considered were going on in the United States and said to them that I considered the activ-

ity of all such groups and organization to be identical in that they were all looking to entrenchment of themselves to be able to control the defense efforts of the United States in time of an emergency in which they might become involved.

Mr. Pacht: I move to strike the answer of the witness.

The Court: The motion is sustained. The answer will be stricken.

Mr. Pacht: I ask your Honor to declare a mistrial upon the ground that the statement made by the witness, apparently in answer to a question of the District Attorney, is in substance an inflammatory address to the jury concerning the duties and obligations of all citizens with respect to national interests of the United States.

The Court: The motion will be denied.

Mr. Pacht: Exception.

The Court: It seems to me this jury understands what the situation is and that they will not be prejudiced in any way by any [160] person's views.

I have been very careful to caution you that you will take your interpretations of the law from the Court. The conversation will be stricken because it does not seem to the Court to be material to any of the allegations here before us. These conversations are admitted on the theory that from a construction as to the confidential nature of the material, the jury may be able to gather information to be used in determining whether the intent required by the statute was present in the defendant Salich.

May I caution the witness to confine his revelations of the conversation to that particular phase of the matter having to do with the instructions given to the defendant Salich and others as to the confidential nature of the work?"

#### IX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin, certain written reports, to all and to each of which the defendant Gorin objected, upon grounds hereinafter stated, and with the stipulation and understanding and ruilng of the Court, all as hereinafter set forth, that the said objection upon the same grounds would be deemed made as to each document when offered in evidence, and with the further stipulation that said objection would be overruled and an exception noted, as appears more particularly from the following:

"Mr. Harrison: Now, if the Court please, we desire to offer in evidence report number designated as 833.

To which offer objection was made on behalf of the defendant Gorin upon the following grounds:

- 1. That no proper foundation has been laid for the introduction of said writing, for the reason that it has not been shown, and there is no evidence to prove, that said report, or any part thereof, relates to or is connected with the national defense of the United States. [161]
- 2. That said report on its face shows that it is not a part of and is not connected with and does

not relate to the national defense of the United States as that term is used in Sections 31, 32 and 34 of the Espionage Act.

- 3. That said report is not an instrument, writing, or document connected with or relating to the national defense as that term is used in Sections 31, 32 and 34 of the Espionage Act.
- 4. That said report on its face shows that it is but a communication by one officer of the United States Navy to another officer of said Navy reporting certain information acquired by said reporting officer concerning the acts and conduct of certain persons in the United States, and that it is not connected with nor does it relate to the national defense of the United States as that term is used in the Espionage Act.
- 5. That said report shows on its face that it is but the conclusion and opinion of the reporting officer relative to the acts and conduct of a certain individual or individuals and the transmission of said reporting officer to another officer of such conclusions and opinion, and that it is not anything connected with the national defense or relating to the national defense as that term is used in the Espionage Act under which this prosecution is being had.
- 6. That the introduction of said report in evidence would have the effect of making the judgment, opinion and conclusion of an officer of the United States Navy a standard whereby to determine the conduct of the defendants and other

persons dealing with the United States Navy and permitting said officer to in effect legislate and create criminal statute.

- 7. That the introduction in evidence of said report would be to give to a regulation of the United States Navy relative to information acquired by its officers and employees the effect of a criminal statute, all in violation of the Fifth and Sixth Amendments of the Constitution of the United States.
- 8. That no proper foundation has been laid for the introduction of said writing for the reason that it has not been shown, and there is no evidence to prove, that a conspiracy was entered into to which the defendant Gorin was a party, and for the further reason that the corpus delicti has not been established.
- 9. That the said document constitutes hearsay testimony as to the defendant Gorin and is not binding on him.

Mr. Stone: May I join in that objection, your Honor, as to all the grounds stated by Judge Pacht, save grounds 8, 9 and 10?

The Court: As to grounds 1 to 7, the objection is overruled and exception allowed.

As to objections 8, 9 and 10—was 10 the last one? Mr. Pacht: Yes, your Honor.

The Court: As to objections 8, 9 and 10, the objection will likewise be overruled, subject to a motion to strike at some later time in the event that the proper connection is not made, the order of

proof being largely within the discretion of the Court. An exception is allowed as to those also.

The Clerk: That will be Government's Exhibit 5 (a).

Mr. Pacht: Contained in Exhibit 5?

Mr. Harrison: This number will be 5(a), indicating that it is folder marked No. 5 for identification, and the specific exhibit is marked "(a)".

Whereupon the document referred to was received in evidence and marked "Government's Exhibit No. 5(a)".

The Court: Now, I presume you propose to make the same formal objection to each one of these proffers of exhibits, is that correct?

Mr. Pacht: That is correct.

The Court: Then, in order to save counsel the burden of repeating his objection, may we not have a stipulation on that subject, and a stipulated ruling? [163]

Mr. Harrison: As far as the Government is concerned, we are perfectly willing that the objection heretofore made shall be deemed as applying to the offering of each and every one of these documents.

The Court: And that the objection is overruled and an exception allowed as to each one?

Mr. Harrison: Yes.

The Court: Then, if there is any special objection to one particular document, that may be reserved and made at the time, and ruled upon separately.

Mr. Pacht: Yes, but it is not necessary for me to urge objections to each separate report which Mr. Harrison intends to introduce from this volume?

The Court: You will not be so required, provided your objection is on the ground already stated.

Mr. Pacht: Yes.

The Court: If you have a distinct and separate objection to one of these, you must make it specifically.

Mr. Pacht: Yes.

Mr. Stone: And that applies, of course, to the defendant Salich as well, your Honor?

The Court: The same ruling and the same stipulation will be accepted as to the defendant Salich.

Mr. Stone: That is satisfactory. The Court: Is it so stipulated?

Mr. Stone: Yes. Mr. Pacht: Yes.

Mr. Harrison: So stipulated, if the Court please."

That, subject to the objections to the ruling of the Court, and the stipulations and exceptions under the terms and circumstances hereinabove noted, the subject matter of the partic- [164] ular assignment herein is the admission into evidence of the following document, in words and figures as follows:

# GOVERNMENT'S EXHIBIT No. 5 (a)

833

7 September 1938

Memo for DIO

Subject: Activities of Japanese.

Enclosure: (A) Memo of DIO dated 31 August 1938.

- 1. Very little information could be obtained by this office on the subject mentioned in Enclosure (A). Three American-born Japanese, George Ohaski, Paul Nakadate and George Suzuki, all resigned very recently from the J. A. C. L., because they were accused of indulging in communist activities. Dr. Miki Nakadate, elder brother of Paul Nakadate, is still in Los Angeles and is very strong in the Los Angeles branch of the J. A. C. L. According to the informant there is news in Los Angeles. relative to any trouble in San Diego, and the Rafu Shimpo stated, the only information they had was of the resignation of the three above mentioned people from the J. A. C. L., due to communist activities.
- 2. This office is of the belief that the informant could discover more concerning this matter but he lacks the energy and the ingenuity to get it.

H. deB. CLAIBORNE."

### X.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 5 (b) (Report No. 841), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Japanese Activities, and which exhibit appears verbatim in the Bill of Exceptions herein filed, [165] and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 260 of this printed record.]

## XI.

That the Court erred in admitting ino evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 5 (c) (Report No. 889), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Suspected Communists at North Island, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 261 of this printed record.]

# XII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (a) (Report No. 570), which said report is a memorandum from the files of the office of Naval Intelligence concerning the subject identified therein as Activities of German-Japanese-Mexican People, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 270 of this printed record.

# XIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections [166] made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 64(b) (Report No. 560), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Japanese Fishing Boats, and which ex-

hibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 271 of this printed record.]

# XIV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (c) (Report No. 548), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Takemitsu Masuno, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 274 of this printed record.]

# XV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out

in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (d) (Report No. 546), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Isukasa Sonobe, and [167] which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 275 of this printed record.]

# XVI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Govrnment's Exhibit No. 6 (e) (Report No. 536), which said report is a memorandum from the files of the Office of. Naval Intelligence concerning the subject identified therein as Yoshachi Ohtani, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 275 of this printed record.]

#### XVII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (f) (Report No. 535), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Ben Nakata, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 276 of this printed record.]

# XVIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into exidence, and exceptions noted, as particularly set out in Assignment [168] No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (g) (Report No. 534), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Notes on Japanese,

and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 277 of this printed record.]

#### XIX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (h) (Report No. 532), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as George H. Nakamoto, Column in Rafu Shimpo by Subject Appearing on 15 June 1938, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order Merein filed. [Set forth at page 277 of this printed record.]

# XX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of

the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (i) (Report No. 530), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Masachika Hirata, Col., IJA, and which exhibit appears verbatim in the Bill of Exceptions [169] herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 277 of this printed record.]

### XXI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (j) (Report No. 529), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Activities of Sensuki Moriya and Akira Ogura, Jr., and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with

stipulation and order herein filed. [Set forth at page 278 of this printed record.]

# XXII.

That the Court erred in admitting into evidence. over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (k) (Report No. 528), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Activities of Dr. Shigaichi Okami, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 278 of this printed] record.]

### XXIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections [170] made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6(1) (Report No. 525), which said

report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Departure of Lieutenant Commander Ohtani and Lieutenant Commander Nagasawa, IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 279 of this printed record.]

# XXIV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (m) (Report No. 519), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Arrival of Japanese Officers, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 280 of this printed record.]

## XXV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (n) (Report No. 514), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Junzo Imamichi, and which [171] exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 280 of this printed record.].

# XXVI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (o) (Report No. 507), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Information on Japanese,

Li'l Tokio, Los Angeles, California, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 281 of this printed record.]

# XXVII.

. That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (p) (Report No. 505), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Junzo Imamichi, and which exhibit appears verbating in the Bill of Exceptions' herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 284 of this printed record.1

# XXVIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into

[172] evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (q) (Report No. 504), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Mr. Matsumoto (first name unknown), Jane Hirao and J. Ohara, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 284 of this printed record.]

#### XXIX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (r) (Report No. 503), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Report on Meeting of the Far East Research Institute in Los Angeles on 9 June 1938, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment

of Errors in accordance with stipulation and order herein filed. [Set forth at page 285 of this printed record.]

## XXX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (s) (Report No. 495), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Issei-Nisei-Bussei, and which exhibit appears verbatim in the Bill of Exceptions herein filed, [173] and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 287 of this printed record.]

# XXXI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's

Exhibit No. 6 (t) (Report No. 489), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Lieutenant Commander K. Nagasawa and Lieutenant Commander I. Ohtani, IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 288 of this printed record.]

#### XXXII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (u) (Report No. 482), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Japanese Visitors to Oil Refineries, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 289 of this printed record.]

### XXXIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into [174] evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (y) (Report No. 480), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Return to Los Angeles and Probable Date of Departure for Japan of Sensuki Moriya and Akira Ogura, Jr., and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 289 of this printed record.]

## XXXIV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (w) (Report No. 479), which said report is a memorandum from the files of the Of-

fice of Naval Intelligence concerning the subject identified therein as Arrival and Departure of Japanese Officers, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page) 291 of this printed record.]

#### XXXV.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (x) (Report No. 477), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Arrival of Japanese [175] Officer, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed., [Set forth at page 291 of this printed record.]

# XXXVI.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and

subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (y) (Report No. 472), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as T. Uchida, Eng. Comdr., IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 291 of this printed record.]

### XXXVII.

That the Ccurt erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particuarly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (z) (Report No. 469), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Lieutenant Commander Inao Ohtani, IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment

of Errors in accordance with stipulation and order herein filed. [Set forth at page 292 of this printed record.]

# XXXVIII.

That the Court erred in admitting into evidence, over the [176] objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (aa) (Report No. 466), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Lieutenant Commander Inac Ohtani, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance-with stipulation and order herein filed. [Set forth at page 292 of this printed record.]

# XXXIX.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (bb) (Report No. 465), which said

report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Hideo Futami, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 293 of this printed record.]

#### XL.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin and subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (cc) (Report No. 439), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as Chieko (Dorothy) Nagai, [177] and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 293 of this printed record.]

# XLI.

That the Court erred in admitting into evidence, the objection of the defendant Gorin and

subject to the offer, objections made, rulings of the Court, stipulation of counsel, admission into evidence, and exceptions noted, as particularly set out in Assignment No. 9 hereinabove, that certain document admitted into evidence as Government's Exhibit No. 6 (dd) (Report No. 435), which said report is a memorandum from the files of the Office of Naval Intelligence concerning the subject identified therein as T. Kono, Engineer-Commander, IJN, and which exhibit appears verbatim in the Bill of Exceptions herein filed, and the substance thereof is not further set forth in this Assignment of Errors in accordance with stipulation and order herein filed. [Set forth at page 294 of this printed record.]

#### XLII.

That the Court erred in denying the motion of the defendant Gorin for an instructed and directed verdict of Not Guilty as to all counts of the indictment, which said motion was made at the conclusion of the introduction of all of the evidence on behalf of the government, upon the grounds that said evidence was insufficient to warrant a conviction of the defendant Gorin, and upon all of the grounds set forth in support of said motion, as appears more particularly in the Bill of Exceptions. [Set forth at page 317 of this printed record.]

### XLIII.

That the Court erred in admitting into evidence, over the objection of the defendant Gorin, defendant Salich's Exhibit "B", and that the grounds of the objection and the proceedings had and the exceptions taken and the exhibit so received in evidence, appear as follows: [178]

"Whereupon there was offered in evidence Report No. 1116. Defendant Gorin objected on the ground that nothing contained in it related to or was concerned with the National Defense and that it was incompetent, irrelevant and immaterial, and upon the ten grounds offered in support of his objection to the first of the reports which were offered in evidence by the Government.

Objection overruled. Exception allowed. The document referred to was received in evidence and marked "Defendant Salich's Exhibit B", and is in words and figures as follows:

18 November, 1938

Memo for C. I. O.

Subject: Bakesy, Captain Charles G.—Interview with the U. S. Secret Service Office in Los-Angeles.

1. The subject, individual was met on the appointed day and it developed that he wanted to see the proper government authority regarding the prosecution of one Leon Lewis, whom Bakesy accused of impersonating an "Army Major" and obtaining from him some of his subversive evi-

dence. It seems that Leon Lewis was introduced to Bakesy once as "Major Frank Montgomery" and later, when Bakesy called on Leon Lewis on some other matter, he recognized him as "Major Montgomery."

2. Bakesy was referred to the United States Attorney's office.

H. deB. CLAIBORNE.

# XLIV.

That the Court erred in sustaining an objection to the introduction into evidence of that certain article, to-wit, a published writing appearing in Vol. 1, No. 1, Ken Magazine, issue of April 7, 1938, pages 40, etc., copy of which article, with the exception of photographs therein, appears in the Bill of Exceptions, and which is not copied here for the reason that the whole thereof is lengthy and voluminous and is printed in full in the Bill of Exceptions and repetition here would be a useless repetition and unnecessarily en- [179] cumber the records, [Set forth at page 485 of this printed record.] and that the proceedings had and taken in connection with the offer into evidence appear in the Bill of Exceptions as follows:

Commander Zacharias, witness on behalf of the Government, testified upon cross-examination, in part, as follows:

"Referring to Report No. 536, which is Government's Exhibit No. 6(e), which reads: "Ohtani, Yoshachi. He will be under Minister S. Koshida, stationed at Mexico City, and who is Minister to six countries from Mexico southward. Ohtani succeeds T. Umimoto, called back to the foreign office; reference 'Ken', article on Japanese spies in the first issue."

The reference there is to an article in the magazine named "Ken", the issue of April, 1938. The article in "Ken" magazine entitled "Exposing the Peril of Panama!" which you are showing me, is the article that I had reference to.

Whereupon the article referred to was marked Defendants Gorin and Salich Exhibit A for identification.

Whereupon there was offered in evidence by the defendants Gorin and Salich the article respecting the peril of Japan, beginning on page 40 of Volume 1, No. 1, Ken Magazine, April 7, 1938, to which offer the Government objected upon the ground that it was incompetent, irrelevant and immaterial and did not tend to establish any of the issues in the case.

Objection sustained. Exception allowed."

#### XLV.

The Court erred in instructing the Jury in part as follows:

"You must be satisfied beyond a reasonable doubt that the information alleged to have been disclosed did in fact relate to the national defense, as that term will now be defined for you by the Court. [180]

The statutes covering this type of case do not require to establish the crime of espionage that the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation. The document need not infact be vitally important or actually injurious. The document or information must be, however, connected with or related to the national defense.

The mere fact that a report has been made by the United States Naval Intelligence, or one of its operatives, or commander, or any officer in charge thereof, concerning an individual or his activities, does not in and of itself mean that such report relates to the national defense.

The character of each report must be determined by considering the nature of the contents of that report, and whether or not the contents related to the national defense.

You are instructed that the term "national defense" includes all matters directly and reasonably connected with the defense of our nation against its enemies. The first lines of defense naturally are the men, the ships and the guns of the navy, the men, the planes and the guns of the air corps, and the men, forts and guns of the army. Behind these—but none the less necessary if the army and navy are to be kept in the field in war-

time or well prepared in peacetime—are those places and things which are essential to the storage of reserves, the inter-communication of armed forces, the transportation of war supplies, the reconditioning of war-torn materials and men, and the manufacture of war supplies.

As you will note, the statute specifically mentions the places and things connected with or complising the first line of defense when it mentions vessels, aircraft, works of defense, fort or battery and torpedo stations. You will note, also, that the statute specifically mentions by name certain other places or things relating to what we may call the secondary line of national defense. Thus [181] some at least of the storage of reserves of men and materials is ordinarily done at naval stations, submarine bases, coaling stations, dock yards, arsenals and camps; all of which are specifically designated in the statute. The inter-communication of armed forces is carried on at telephone, telegraph, wireless or signal stations, which the statute designates. The transportation of war supplies is accomplished by canals and railroads, similarly designated. The reconditioning of war-torn materials and men is accomplished, among other places, at naval yards and naval stations and the manufacturing of war supplies is accomplished at factories and mines. The general words, "building or office" are also mentioned.

You are instructed in the first place that for purposes of prosecution under these statutes, the

information, documents, plans, maps, etc., connected with these places or things must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation. Thus a map of a mine-field would be a document directly affecting the usefulness of that mine-field, for if such map should fall into the hands of another country the ships of that power might easily pass through the mine-field. Thus its usefulness as an instrument of national defense would be nullified as against that nation.

Similarly, even information that representatives or agents of some foreign power were in possession of such a map or plan or the map or plan of a shore-battery, might likewise directly concern the usefulness of that mine-field or that battery as an instrument of defense. Manifestly, it might have to be rebuilt or changed. Such information might be essential to any successful naval strategy in that area during wartime.

You are instructed that in the second place the information, documents or notes must relate to those angles or phases of the instrumentality, place or thing which relates to the defense of our nation; thus, if a place or thing has one use in peacetime and another [182] use in wartime, you are to distinguish between information relating to the one or the other use. Thus an auto factory may make automobiles in time of peace and tanks in wartime. Information relating to its output of automobiles might not be connected with the national

defense; information relating to its output of tanks might be related to the national defense.

Or, again, an air photo, from 2,000 feet altitude of terrain surrounding a battery might contain many things unimportant to the national defense, yet from a military standpoint it might be intimately connected with the efficiency of that battery, since from such photo an enemy might deduce the strong and the weak points in the position of such battery, the angle of fire of its guns, the size of its gun emplacement, and various other facts of military importance.

The information, document or note might relate to physical substances or instruments of warfare, either of our own forces or those of another power. This might include guns, gas masks, helmets, or any other part of army or navy equipment. Such information, document or note might conceivably concern a chemical whose peculiar properties might enable it to eat through the plates of a warship or destroy communication cables, or cables connecting mines with their moorings.

The information, document or note might also contain statistics or figures relating to some place intimately connected with the national defense. For example: The document might contain the exact draught of every vessel in the United States Navy. This information would enable the enemy to know precisely into how shallow waters each vessel in our fleet might venture.

The information, document or note might also relate to the possession of such information by another nation and as such might also come within the possible scope of this statute. Thus a document narrating the fact that a certain foreign power has definite infor- [183] mation as to the exact draught of our vessels might be vital to the military and naval defense of our country. For from the standpoint of military or naval strategy it might not only be dangerous to us for a foreign power to know our weaknesses and our limitations, but it might also be dangerous to us when such a foreign power knows that we know that they know of our limitations.

You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availablity of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions."

# XLVI

That the grounds urged at the trial for the objection and the exception taken were as follows:

"Mr. Pacht: If the Court please, I desire, first, to except to the instruction which Your Honor just gave to the jury, that it is sufficient to convict if any one or more of the reports offered in evidence deal with the national defense.

The Court: That wasn't the instruction. You will have to be more specific in order to make the exception any good. Taken at this late date, it would be meaningless. The Court connected it up with the entire instruction, and stated that as to those reports it was not necessary that all of those reports deal with the national defense; that one or more of the reports could deal with the national defense, and that the jury in their deliberations, tying it in with the entire instructions, should so consider it. [184]

Now, if your point—if it is your position that all of the instructions had to do with the national defense in order that the defendants should be guilty, you must be specific. If that is your point, that may be registered.

Mr. Pacht: My point is, if the Court please, under the statute, the jury cannot determine whether any of these reports deal with the national defense.

The Court: That is an entirely different ques-

Mr. Pacht: And that none of them do, as a matter of law, deal with the national defense.

The Court: That is a different point.

Your point there is that the jury has no privilege in determining whether or no any of these reports have to do with the national defense, that that is a matter for the Court and not for the jury, as a matter of law.

Mr. Pacht: Yes.

The Court: Yes. That exception may be allowed."

"Mr. Pacht: Your Honor, I specifically except to your Honor's instruction to the jury concerning the subject matter of national defense, the definition of the term national defense; and I further except to it upon the ground that it violates Sections 5 and 6 of the United States Constitution—or, rather, the amendments to the Constitution—and that it submits for the determination of the jury and the interpretation of the jury, a law or an enlargement of it.

The Court: The exception will be permitted.

Mr. Pacht: And, in that connection, we specifically request the Court to give the instruction relating to national defense and the definition of it, as set forth in our requested Instructions G-29, G-37, G-39, CC—which I haven't yet called to your Honor's [185] attention.

The Court: The request will be denied, and an exception allowed."

# XLVII.

That the Court erred in instructing the jury, in part, as follows:

"You are instructed that the law requires only that the Government prove either an intent of a reason to believe that the information was to be used either to the injury of the United States or to the advantage of the fareign nation—in this ease, the Union of Soviet Socialist Republics. Hence, it will be sufficient to satisfy the requirements of the law if, for example, the Government proves to you beyond a reasonable doubt that both Salich and Gorin had reason to believe that the information disclosed was to be used to the advantage of Russia. In such case, you would be entitled to find that each defendant had the criminal intent specified in the statute.

The intent or purpose of a person is from its very nature a matter which has to be proved by circumstantial evidence. It is obvious that it is impossible to examine into the mind of the person while he is committing an alleged crime to ascertain just what was his intent. It is also true that if a person is about to commit a crime, or during the course of committing a crime, he avoids as far as possible revealing what his intentions are. The explanation which the defendant makes or what was his intent even though quite plausible is not conclusive as to just what was his intent.

This infent the Government must prove to you as a fact; but intent can be proved by facts and acts from which it may be inferred. If the inferences from proven facts and acts are as consistent with an innocent as with a guilty intent, the point is not proved. But on the other hand, if they exclude every hypothesis except that of guilt, the point is proved. In considering these facts and acts, and the inferences drawn from them, you should consider [186] whether or not there are any circumstances brought out in the evidence of this case which are consistent with some intent other than that this information be used to the injury of the United States or to the advantage of the Union of Soviet Socialist Republics. You should consider ·likewise the character of the information here in question—whether or not it is susceptible to use by the Union of Soviet Socialist Republics, and whether or not the defendant Hafis Salich knew facts from which he concluded, or reasonably should have concluded, that this information could advantageously be used by the Union of Socialist Republics."

That the grounds urged at the trial for the objection and the exception taken were as follows:

"Mr. Pacht: We except to the Court's charge given this morning that Salich's belief, honestly entertained, as to his view of the law that the information which he gave to Gorin was not injurious to the United States or of advantage to a foreign power, is of no avail to him as a defense in this case, but that he may be convicted nevertheless. We except to that charge. I am hereby referring to the subject matter; I am not pretending to give the exact phraseology.

The Court: You except to the form of the instruction?

Mr. Pacht: Yes.

The Court: Very well. The exception will be entertained.

Mr. Pacht: We except to the charge of the Court given this morning that it is sufficient if the defendants had reason to believe that the information was to be given to the U. S. S. R., and we ask the Court to charge before this jury may convict the defendants, or any of them, they must find that the defendants had a special intent to injure the United States, or a specific intent that the transmittal or obtaining of the information was to 'e of advantage to the U. S. S. R. [187]

The Court: The point there being that if you wish an instruction, it must be a specific intent?

Mr. Pacht: Yes, your Honor.

The Court: The reason to believe, as defined by the Court, is not sufficient?

Mr. Pacht: Yes, your Honor.

The Court: The exception will be entertained, and the request denied."

# XLVIII.

That the Court erred in failing and refusing to give to the jury Instruction No. G-29 as it appears on Page A-1, requested by the defendant Gorin, which said requested Instruction was as follows:

"Defendants' Instruction No. G-29

As defined in the statutes in question in this case, the National Defense relates solely and is limited to the following places and things, namely:

Any vessel, airconft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dock yard, canal, railroad, arsenal, camp, factory, mine, telegraph telephone, wireless, signal station, building, office, other places connected with the National Defense owned or constructed or in progress of construction by the United States, cr under the control of the United States, or any of its officers or agents, or within the exclusive jurisdiction of the United States, or of any place in which any vessel, aircraft, arms, munitions, or other materials of instruments for use in time of war, are being made, prepared, repaired, or stored under any contract or agreement with the United States, or by any person on behalf of the United States."

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask your Honor to instruct the jury— [188] strike that. In addition to the in-

structions which we have asked the Court to give, and which have been filed already, and specifically at this time we ask the Court to give Instruction No. G-29, to the effect that, as defined in the statute in question in this case, the national defense relates solely and is limited to the places and things designated in Subdivision (a) of Section 31, Title 50 of the United States Code, to-wit, any vessel, aircraft, and so forth.

The Court: That exception will be noted, and the requested instruction declined.

# XLIX

That the Court erred in failing and refusing to give to the jury Instruction No. G-37 as it appears on Page A-1, requested by the defendant Gorin, which said requested Instruction was as follows:

# "Defendants' Instruction No. G-37

Unless you find beyond a reasonable doubt from the evidence in the case that the defendants Gorin copied, took, made, obtained, or attempted or induced or aided another to copy, take, make or obtain a sketch, photograph, photographic negative, blue-print, plan, map, model, instrument, appliance, document, writing or note concerning a vessel, aircraft, work or defense, Navy yard, Naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless,

signal station, building, office, or other place connected with the national defense, as that term is otherwise in these instructions defined, and unless you further find that such sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing or note connected with said national defense was obtained with intent or reason to believe that the same was to be used in the injury of the United States or to the advantage of a foreign nation, you may not convict the said defendants Gorin, or either of them, but on the contrary, they are [189] entitled to an acquittal at your hands. To put it another way, it is not sufficient for you to find that any document or report was obtained by the defendants Gorin, or either of them, from the Naval Intelligence. You must in addition find that such document was a sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing or note relating to said national defense, and concerned some vessel, aircraft, work of defense, Navy yard, Naval station, submarine base, coaling station, fort, battery, forpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with said national defense."

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: We ask the Court to give the jury Instruction No. G-37, heretofore submitted to the Court, in substance, to this effect: That unless the jury find beyond a reasonable doubt from the evidence in the case that the defendants Gorin took, copied, made, obtained or attempted to induce another to make a copy, sketch, and so forth—

The Court: (Interrupting): I am familiar with

that.

Mr. Pacht: G-379°

The Court: I have it before me.

Mr. Pacht: With the intent that the same be to the injury of the United States or of advantage to a foreign power, that they are not guilty of any offense, and the jury should acquit them.

The Court: The request will be denied; ex-

ception allowed."

#### L

That the Court erred in failing and refusing to give to the jury Instruction No. G-39 as it appears on Page A-2; requested by the defendant Gorin, which said requested Instruction was as follows: [190]

# "Defendants' Instruction No. G-39

The evidence in this case discloses that many of the reports enumerated in the indictment deal with the arrival and departure of certain Japanese officials, Naval officers, and Japanese businessmen; other of said reports deal with the activities of Japanese fishing boats in Southern California waters; still others of said reports deal with the political and economic opinions of various and sundry persons; still other of said reports deal with the conduct of certain Japanese with relation to the support of the Japanese war in China, and the raising of funds for the prosecution of said war.

If you find that these reports or the substance of them, or any of them, were obtained by the defendant Mikhail Gorin from the defendant Salich, or from the Naval Intelligence, that fact or circumstance would not make the defendant Goringuilty of any of the offenses charged in the indictment. On the contrary, he is entitled to an acquittal at your hands.

None of said matters relate to or concern the national defense as I have heretofore defined that term to you."

That the grounds arged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask your Honor to instruct the jury as more fully set forth in our requested instruction heretofore submitted, No. G-39, that the evidence in this case discloses that many of the reports enumerated in the indictment deal with the arrival and departure of Japanese commercial operators, Naval officers and Japanese businessmen, and other reports that deal with activities of Japanese fishing boats in Southern California, and still

others that deal with the political and economic opinions of various and sunday persons, and still others deal with the conduct of certain Japanese, and so forth.

The Court: You mean the same form as submitted? [191]

Mr. Pacht.: Exactly.

The Court: The request will be denied, and an exception allowed.

Mr. Pacht: I ask your Honor to instruct the jury as submitted in Instruction No. BB, heretofore submitted to the Court.

The Court: The request will be denied; exception allowed.

Mr. Pacht: That is as to our requested instruction BB?

The Court: Yes."

#### LI.

That the Court erred in failing and refusing to give to the jury Instruction No. GG as it appears on Page A-4, requested by the defendant Gorin, which said requested Instruction was as follows:

"Defendants' Gorin Requested Instruction No. GG.

9 You are instructed that Government exhibits 5a,
5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 5k, 5l, 5m, 6a, 6b,
6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p,
6q, 6r, 6s, 6t, 6u, 6v, 6w, 6x, 6y, 6z, 6aa, 6bb, 6cc,
6dd, being files of the United States Office of Naval
Intelligence, Ambered respectively, 833, 841, 889,

1145, 1139, 1133, 1132, 1130, 1129, 897, 1110, 1104, 1081, 570, 560, 548, 546, 536, 535, 534, 532, 530, 529, 528, 525, 519, 514, 507; 505, 504, 503, 495, 489, 482, 480, 479, 477, 472, 469, 466, 465, 439, 435, and the information contained in them, do not, and each of them does not, affect or relate to the national defense."

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to give the jury Instruction No. GG, requested by us, in which there is set forth certain numbered reports. They do not relate to the national defense.

The Court: The request will be received, denied, and an exception allowed."

# EII.

That the Court erred in failing and refusing to give to [192] the jury Instruction No. FF-1 as it appears on Page A-4, requested by the defendants Gorin, which said requested Instruction was as follows:

"Defendants' Gorin Instruction No. FF-1

You are advised that the term "to the advantage of any foreign nation" as used in Sections 31, 32, and by reference in Section 34 of the Espionage Act, is defined as and is to be taken by you as meaning an advantage as against the United States. It does not mean to the advantage of a foreign nation against another foreign nation, but only

as against the United States, unless it would also be of advantage against the United States. The word "advantage" is specifically defined as meaning a condition of being in advance or superior or in a superiority of state or position or condition or circumstance, opportunity, or means particularly favorable to success or to any desired end."

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to instruct the jury as set forth in our requested Instruction FF-1.

The Court: The request will be denied, and an exception allowed."

#### LIII.

That the Court erred in failing and refusing to give to the jury Instruction No. FF-2 as it appears on Page A-4, requested by the defendants Gorin, which said requested Instruction was as fellows:

"Defendants' Gorin Requested Instruction No. FF-2

You are instructed that, if you arrive and agree upon a verdict of not guilty in favor of the defendant Natasha Gorin on the third count of the indictment, that is, on the conspiracy count, as to which count she alone is charged, I then charge you that you must also find and return a verdict

of not guilty as to the other two defendants upon count three of the indictment, that is, the conspiracy count." [193]

That the grounds urged for the giving of said requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask your Honor to instruct the jury as heretofore requested in our submitted Instruction No. FF, which I will, for the present purpose, designate as FF-2.

The Court: The request will be denied, and an exception allowed."

#### LIV.

That the Court erred in failing and refusing to give to the jury Instruction No. AA as it appears on Page A-5, requested by the defendants Gorin, which said requested instruction was as follows:

"Defendants' Gorin Instruction No. AA

You are instructed that, as I have heretofore instructed you, a conspiracy must be founded and based upon an agreement by and between each of the defendants charged to accomplish the transmittal and communication to the U. S. S.R. of "documents, writings, plans, notes, instruments, and information relating to the national defense." An agreement of necessity means a meeting of minds as to the object to be accomplished. In this case it is charged in the indictment that the illegal

purpose as to which defendants Salich and Gorin agreed, was to so transmit the "documents, writings, plans, notes, instruments, or information relating to the national defense", and L charge you that if you find and believe from the evidence that there was at no time any intent or purpose on the part of the defendant Salich to give any of such specifically mentioned items, even though you may believe that the defendant Gorin desired to and wanted to get such items, that there was no meeting of minds between the defendants Salich and Gorin sufficient to constitute an agreement or combination within the meaning of the law of conspiracy, sufficient to constitute a conspiracy, and you will return a verdict of acquittal in favor of the defendants as to the third count of the indictment."

That the grounds urged for the giving of such requested [194] Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask your Honor to instruct the jury as per the instruction submitted by us numbered AA, concerning the subject of conspiracy, and that it refers to the documents and papers and objects referred to in Subdivision (a) of Section 31.

The Court: The offer will be declined, and an exception allowed."

#### LV.

That the Court erred in failing and refusing to give to the jury Instruction No. K and which

was requested by the defendants Gorin, which said requested Instruction was as follows:

# "Defendants' Gorin Instruction No. K

You are instructed that unless you find and believe upon the evidence that it was the intention of the defendants Gorin to obtain information or to transmit information to the injury of the United States and to the advantage of U. S. S. R. in a military sense, that is, so that it would do harm to the United States in a military way, or would aid the U. S. S. R. against the United States in a military way, such acts and conduct on their part does not have the necessary element of intent required under the law, and you will acquit said defendants."

That the grounds urged for the giving of such a requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask your Honor to instruct the jury as per the instruction heretofore submitted to the Court marked K.

The Court: The request will be denied, and an exception allowed.

# LVI.

That the Court erred in failing and refusing to give to the jury Instruction No. T as it appears on Page A-5, requested by the defendants Gorin, which said requested Instruction was as follows:

[195]

Defendants' Gorin Instruction No. T

You are instructed that the acts charged, that is the alleged obtaining or transmitting or conspiracy to transmit reports of the office of Naval Intelligence, or information therefrom, by the defendants, must in each instance have been done with the intent on the part of defendants or reason on their part to believe, "that it was to be used to the injury of the United States or to the advantage of the U.S.S.R. I desire to define certain of these words to you. "Injury" as used in the statutes under which this indictment is being prosecuted means damage or hurt done to or suffered by the United States in a military sense. Likewise, the word "advantage", as used in the statutes as a military connotation. The word "advantage" used by itself means the condition of being in advance or superior or in a superiority of state of position, or any condition, circumstance, opportunity, or means particularly favorable to success or to any desired end. To give the meaning that the statute contemplates, there must be found that the information was obtained or disclosed with the intent or reason to believe that it was to be used to the injury of the United States and to the advantage of the U. S. S. R. as against the United States, all in a military sense. In other words, the defendants in order to be found guilty of the specific intent charged in the indictment and required under the statute must have had a specific intent or reason, as ordinary persons would have, to believe that the information obtained or transmitted was to be used to do harm or injury to the United States in a military way, and to give to the U. S. S. R. a condition of superiority favorable to success as against the United States. The advantage must be both in a military sense and be an advantage not merely academic or general but an advantage as against the United States."

That the grounds urged for the giving of such requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to instruct the jury in ac- [196] cordance with the instruction heretofore submitted to the Court marked T, defining the terms "injury" and "advantage."

The Court: The request will be denied, and an exception allowed."

#### LVII.

That the Court erred in failing and refusing to give to the jury Instruction No. G-41 as it appears on Page A-6; requested by the defendants Gorin, which said requested Instruction was as follows:

"Defendants' Instruction No. G-41

You are instructed that the defendants are charged in the second count of the indictment with

communicating, delivering and transmitting to the Union of Soviet Socialist Republics the confidential reports of the investigators of the United States Naval Intelligence specifically described in said second count, and in the third count of said indictment with conspiring so to do. You are further instructed that the defendant Mikhail Gorin cannot be found guilty under said second or third count of so transmitting and communicating said reports solely by proof of the fact that he is a citizen or national of said Union of Soviet Socialist Republics or an agent or representative thereof. In other words, he cannot be said to transmit or deliver any of said reports to himself and it must appear from the evidence beyond a reasonable doubt that said Mikhail Gorin did some other act or communicated with some other person or agency in communicating, delivering and transmitting said reports."

That the grounds urged for the giving of such requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to instruct the jury as per the submitted instruction G-41.

The Court: It will be declined; exception allowed." [197]

### LVIII.

That the Court erred in failing and refusing to give to the jury Instruction No. G-19 as it

appears on Page A-7, requested by the defendants Gorin, which said requested Instruction was as follows:

# "Defendants' Instruction No. G-19

You are instructed that it is your duty as jurors to deliberate and confer one with the other fully and honestly about the questions herein involved under these instructions, but you are further instructed that after having fully considered and weighed the various points of view that may arise in your discussion among you that you are individually to arrive at your own honest judgment as to the guilt or innocence of each particular defendant on each count. It is not your duty, as a juror, to compromise your verdict with a view to rapid and hasty decision for purposes other than that of arriving at the sure and frank truth as it actually exists in each juror's mind, and if, after such discussions, any of you have a reasonable doubt as to the guilt of any or all of the defendants, it is not only your right but your duty to maintain your position and not to compromise your verdict."

That the grounds urged for the giving of such requested Instruction, and the exception taken were as follows:

"Mr. Pacht: I ask the Court to instruct the jury as requested by us in instruction heretofore submitted to the Court marked G-19, concerning

the defendants being entitled to the individual opinion of each juror.

· The Court: That will be declined; exception allowed."

#### LIX:

That the Court erred in denying the motion of the defendant Gorin in arrest of judgment, made upon the grounds stated and set forth in the written motion filed and made as the same appears in the Bill of Exceptions. [198]

#### LX.

That the Court erred in denying motion of the defendant Gorin for a new trial, said motion being made on the grounds set forth in written motion filed and made as the same appears in the Bill of Exceptions.

(Note: Attached to this Assignment of Errors and marked "Exhibit A" is a copy of the order made in the matter in the Circuit Court of Appeals by the Honorable Curtis D. Wilbur, senior Judge, relative to the omission of repetitive matter in the Assignment of Errors.) [See page 629 of this printed record.]

Wherefore, the defendant Mikhail Nicholas Gorin, by reason of said errors and other manifest errors appearing in the records herein, and upon the record in said cause, plays that the verdict and judgment of conviction herein, and each of them, may be reversed, set aside and that he be discharged from custody.

Dated this 9th day of June, 1939.

PACHT, PELTON, WARNE & BLACK ISAAC PACHT

CLORE WARNE

Attorneys for Defendant Mikhail Nicholas Gorin.

[Endorsed]: Assignment of Errors—Filed June 10, 1939. [199]

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. No. 9135. Mikhail Nicholas Gorin, Appellant, vs. The United States of America, Appellee. No. 9136. Hafis Salich, Appellant, vs. The United States of America, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Southern District of California. Central Division.

Filed July 21, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.



In The United States Circuit Court of Appeals \*
For The Ninth Circuit

No. 9135

UNITED STATES OF AMERICA,

Plaintiff and Respondent,

VS.

HAFIS SALICH and MIKHAIL NICHOLAS GORIN,

Defendants and Appellants.

DEFENDANT GORIN'S STATEMENT OF POINTS ON WHICH HE INTENDS TO RELY AND DESIGATION OF RECORD.

To Paul P. O'Brien, Esq., Clerk of said court, and to Ben Harrison and Norman W. Neukom, Esqs., attorneys for plaintiff and respondent:

Please take notice that the defendant and appellant Mikhail Nicholas Gorin, on his appeal in this case, intends to rely upon the following points, all as more particularly set forth in his assignment of errors herein filed, to-wit:

- (1) Error in overruling and denying motion to dismiss and demurrer to indictment as specifically set forth in assignment of error I.
- (2) Error in denying said defendant's motion to dismiss indictment and direct verdict of acquittal at conclusion of opening statement of the United States Attorney, as specifically set forth in assignment of error II.

- (3) Error in denying motion to strike certain testimony of witness Zacharias, as specifically set forth in assignment of error III.
- (4) Error in overruling objection of defendant Gorin to admission of certain testimony given by the witness Zacharias, as specifically set forth in assignment of error IV.
- (5) Error in overruling objection of defendant Gorin to testimony of Zacharias, as specifically set forth in assignment of error VI.
- (6) Error in denying motion to strike certain testimony of witness Zacharias, as specifically set forth in assignment of error VII.
- (7) Error in refusing to grant a mistrial of said cause upon application of defendant Gorin because of statement and testimony of Zacharias, as specifically set forth in assignment of error VIII.
- - (9) Error in sustaining objection on behalf of the Government to introduction into evidence of a certain newspaper article in Volume 1, No. 1, of Ken Magazine, as specifically set forth in assignment of error XLIV.

- (10) Error of the court in instructing the jury, as specifically set forth in assignment of errors XLV and XLVI and XLVII, the substance of said instructions objected to covering the interpretation by the court of the statute under which the prosecution in this action was had, to wit, 50 United States Code, Sections 31, 32, and 34.
- (11) Error in refusing to give certain instructions requested by defendant Gorin covering the question of the interpretation of said statutes, all as specifically set forth in assignment of errors XLVIII, XLIX, L, LI, LII, LIV, LV, LVI, LVII.
- (12) Error in refusing to give defendant Gorin's requested instruction FF-2, as specifically set forth in assignment of error LIII, with reference to law of conspiracy as applicable to the case.
- (13) Error in refusing to instruct the jury as requested in defendant Gorin's instruction No. D-19, as specifically set forth in assignment of error LVIII, with reference to the duty of the several jurors.
- (14) Error in denying motion of the defendant Gorin in arrest of judgment, as specifically set forth in assignment of error LIX.
- (15) Error in denying motion of defendant Gorin for new trial, as specifically set forth in assignment of error LX.

#### Designation of Record

You will further take notice that said defendant designates the parts of the record which he thinks necessary for the consideration of the said points on which said defendant intends to rely on the appeal, as follows:

The whole of the transcript of record on appeal as forwarded by the clerk of said district court in which the action was tried in so far as it concerns the said defendant Mikhail Nicholas Gorin and as specifically set forth in Praecipe for transcript of record on appeal delivered to the clerk of said court and forwarded as a part of the transcript of said record, and including the whole of the Bill of Exceptions in said action settled and allowed.

Dated: 20 July, 1939.

MIKHAIL NICHOLAS GORIN,
Appellant
By PACHT, PELTON, WARNE &
BLACK,
CLORE WARNE,
ISAAC PACHT,
Attorneys for said Appellant.

Received copy of the within Defendant Gorin's statement of points on which he intends to rely and designation of record.

This ..... day of July, 1939.

BEN HARRISON By RALPH E. LAZARUS.

[Endorsed]: Filed Jul. 21, 1939. Paul P. O'Brien Clerk.

[Title of Circuit Court of Appeals and Cause.]

DEFENDANT SALICH'S STATEMENT OF POINTS ON WHICH HE INTENDS TO RELY AND DESIGNATION OF RECORD.

To Paul P. O'Brien, Esq., Clerk of said Court, and to Ben Harrison, Esq. and Norman W. Neukom, Esq., attorneys for plaintiff and respondent:

You and each of you will please take notice that the defendant and appellant Hafis Salich, on his appeal in the above entitled case, intends to rely upon the following points, all as more particularly set forth in his Assignment of Errors herein filed, to-wit:

- (1) Error in overruling the demurrer and motion to quash indictment made by defendant Hafis Salich, as specifically set forth in Assignment of Error I.
- (2) Error in denying motion of Hafis Salich for a directed verdict made at the conclusion, of the opening statement of the District Attorney, as specifically set forth in Assignment of Error II.

(3) Error in admitting evidence on behalf of plaintiff given by the witness Alice A. Nelson, as specifically set forth in Assignment of Error III.

(4) Error in denying the motion of the defendant Salich to strike the whole of the testimony of the witness Alice A. Nelson, as specifically set forth in Assignment of Error IV.

- (5) Error in overruling the objection of defendant Salich to the admission of certain testimony given by the witness Denton W. Leonard as specifically set forth in Assignment of Error V.
- (6) Error in overruling the objection of defendant Salich to the admission of certain testimony given by the witness Hanna, as specifically set forth in Assignment of Error VI.
- (7) Error in denying the motion of defendant Salich to strike certain testimony of the witness Roy Hanna, as specifically set forth in Assignment of Error VII.
- (8) Error in overruling the objection of the defendant Salich to the admission of certain testimony given by the witness Roy Hanna, as specifically set forth in Assignment of Error VIII.
- (9) Error in overruling the objection of the defendant Salich to the admission of certain testimony given by the witness Roy Hanna, as specifically set forth in Assignment of Error VIIIa.
- (10) Error in denying the motion of the defendant Salich to strike certain testimony of the witness Roy Hanna, as specifically set forth in Assignment of Error IX.
- (11) Error in overruling the objection of the defendant Salich to the admission of certain testimony of the witness G. B. Dierst, as specifically set forth in Assignment of Error XI.
  - (12) Error in overruling objection of defendant Salich to the admission of certain testimony of the witness G. B. Dierst, as specifically set forth in Assignment of Error XII.

- (13) Error in denying the motion of the defendant Salich to strike certain testimony of the witness John H. Hansen, as specifically set forth in Assignment of Error XIII.
- (14) Error in denying the motion of the defendant Salich to strike certain testimony of the witness Elias M. Zacharias, as specifically set forth in Assignment of Error XIV.
- (15) Error in overruling the objection of the defendant Salich to the admission of certain testimony given by the witness Elias M. Zacharias, as specifically set forth in Assignment of Error XV.
- (16) Error in denying the motion of the defendant Salich to strike certain testimony of the witness Elias M. Zacharias, as specifically set forth in the Assignment of Error XVI.
- (18) Error in overruling the objection of the defendant Salich to the admission into evidence of

certain testimony of the witness Henri deB. Claiborne, as specifically set forth in Assignment of Error LX.

- (19) Error in overruling the objection of the defendant Salich to the admission into evidence of certain testimony of the witness Henri deB. Claiborne, as specifically set forth in Assignment of Error LXI.
- (20) Error in denying the motion of the defendant Salich for a directed verdict which said motion was made at the close of the Government's case as specifically set forth in the Assignment of Error LXII.
- (21) Error in overruling the objection of defendant Salich to the admission into evidence on behalf of the plaintiff of Government's Exhibit No. 8, as specifically set forth in Assignment of Error LXIII.
- (22) Error in sustaining the objection of counsel for the plaintiff to a certain question asked of the witness Salich as specifically set forth in Assignment of Error LXIX.
- (23) Error in sustaining the objection on behalf of the Government to introduction into evidence of defendant Salich's and Gorin's Exhibit A, being an article in Ken magazine, Volume 1, No. 1, April 7, 1938, on Page 40, specifically set forth in Assignment of Error LXX.
  - (24) Error in denying the motion of defendant

Salich for a directed verdict, as specifically set forth in Assignment of Error LXXI.

- (25) Error of the Court in refusing to give to the jury certain instructions requested by the defendant Salich covering the question of the interpretation of the statute under which the prosecution in this action was had, to-wit, Title 50, United States Code, Sections 31, 32, and 34, as specifically set forth in Assignments of Error LXXII and LXXIII.
- (26) Error of the Court in instructing the jury in regard to the interpretation of the statute under which the prosecution in this action was had, to-wit, Title 50 United States Code, Sections 31, 32, and 34, as specifically set forth in Assignments of Error LXXIV and LXXV.
- (27) Error in denying the motion of defendant Salich for a new trial or for a judgment notwithstanding the verdict, as specifically set forth in Assignment of Error LXXVI.

#### Designation of Record

You and each of you will further take notice that said defendant Hafis Salich designates the parts of the record which he thinks necessary for the consideration of the said points on which said defendant intends to rely on the appeal, as follows:

The whole of the transcript of record on appeal as forwarded by the clerk of said district court in which the action was tried in so far as it concerns the said defendant Hafis Salich, and as specifically set forth in Praecipe for transcript of record on appeal delivered to the Clerk of said Court and forwarded as a part of the transcript of said record, and including the whole of the Bill of Exceptions in said action settled and allowed.

Dated: 19th of July, 1939.

WILLARD J. STONE, Jr.

Attorney for Appellant Hafis Salich.

Received a copy of the within Defendant Salich's statement of points on which he intends to rely and designation of record.

This 20 day of July, 1939.

BEN HARRISON By RALPH E. LAZARUS.

[Endorsed]: Filed Jul. 21, 1939. Paul P. O'Brien, Clerk. IN THE

## United States Circuit Court of Appeals For the Ninth Circuit

MIKHAIL NICHOLAS GORIN,

Appellant,

VS.

THE UNITED STATES OF AMERICA,
Appellee.

Upon Appeal from the District Court of the United
States for the Southern District of California,
Central Division

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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#### United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Monday, October 2, 1939.

Before: Garrecht and Denman, Circuit Judges. [Title of Cause.]

### ORDER GRANTING LEAVE TO FILE ADDITIONAL ASSIGNMENTS OF ERROR.

Upon consideration of the application of counsel for appellant, and stipulation of counsel for appellee, and by direction of the court, It is Ordered that appellant be, and he hereby is granted leave to file two additional assignments of error to be numbered LXI and LXII.

#### United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Thursday, February 15, 1940.

Before: Garrecht, Haney and Healy, Circuit Judges.

[Title of Cause.]

#### ORDER OF SUBMISSION

Ordered appeals in above cause argued by Mr. Isaac Pacht, counsel for appellant Gorin, and by Mr. Willard J. Stone, Jr., counsel for appellant, Salich, by Mr. Norman Neukom, Assistant U. S. Attorney, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit

Excerpt from Proceedings of Monday, April 22, 1940.

Before: Garrecht, Haney and Healy, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENTS.

By direction of the Court, Ordered that the typewritten opinion this day rendered by this Court in above causes be forthwith filed by the clerk and that judgments be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeals from the District Court of the United States for the Southern District of California, Central Division.

Before: Garrecht, Haney and Healy, Circuit Judges.

Haney, Circuit Judge.

Appellants challenge judgments and sentences rendered against them after conviction on three counts of an indictment. The first count charged violation of §1 of the Act of June 15, 1917, Ch. 30,

40 Stat. 217 (50 USCA §31); the second count charged violation of §2 of that act (50 USCA §32); and the third count charged violation of §4 of that act (50 USCA §34). Generally speaking, these offenses relate to espionage.

One branch of the Navy service is the Naval Intelligence Office. Headquarters for the Eleventh Naval District are at San Diego, the intelligence office there being in charge of a District Intelligence Officer. A branch office is located at San Pedro and is in charge of an Assistant District Intelligence Officer. The investigators employed at the San Pedro office make their reports orally or in writing. The Assistant District Intelligence Officer then digests and evaluates the information and dictates the report to the Chief Yeoman-a secretarial employee. The latter, in writing the report on the typewriter, makes an original, three yellow copies and one green copy. These reports are numbered consecutively. One yellow copy and one green copy are retained in the San Pedro office and the remaining copies are sent to the San Diego office.

Appellant Salich was born in Moscow, Russia, on May 24, 1905, and lived there until 1917, when he moved with his parents to Kazen which is about 700 miles east of Moscow. He then went to Manchuria in 1920, to Yokohama, Japan, 1921, and to the United States in 1922. He became a naturalized citizen of the United States, and was employed by the Berkeley Police Department as an active officer from July 1, 1930 until August 15, 1936. In 1935,

Salich met one Aliavdin, Vice Consul for the Union of Soviet Socialist Republics (hereafter called the Soviet Union) in San Francisco, and thereafter saw him a number of times. In 1936, Salich made an application for a position with the United States Naval Intelligence Office. A letter from San Diego, dated August 10, 1936, advised Salich of his appointment, and he reported for work in San Pedro on August 19, 1936. At that time one Davis was District Intelligence Officer and one Roachefort was Assistant District Intelligence Officer. Salich thereafter saw Aliavdin in Los Angeles. Aliavdin knew that he was working for the Naval Intelligence Office.

Salich was an investigator and reported the results of his investigations to the Assistant District Intelligence Officer. He was expected to read the yellow copies of the reports which were kept in the Chief Yeoman's desk, in order to be familiar with the progress of investigations.

Appellant Gorin and his wife are citizens of the Soviet Union, and arrived in this country on January 10, 1936, under a passport issued by the Soviet Union. He then testified before a Board of Special Inquiry that he was to be employed in the Entourist Department of the Amtorg Trading Corporation, his salary to be paid by the Russian government through such corporation. His work was the organization of tourist parties from America to the Soviet Union, He was stationed at Los Angeles. Roachefort instructed Salich to contact someone in

soviet official named Kaganovich in July or August, 1937. Salich eventually contacted Gorin and had a conversation with him. Later during that year Gorin called at Salich's home, in the latter's absence, and told Salich's wife that he had a letter for Salich. A day or so afterward, Salich called at Gorin's home, found him busy, but saw him two or three days later, when he received the letter, written by Aliavdin introducing Gorin to Salich. At this meeting Gorin mentioned his interest in matters pertaining to Japanese activities and Japanese activities only. Salich told Gorin that he did not believe that he had any information which would be of benefit to anyone.

Salich reported the conversation to Roachefort. There was testimony that Roachefort ordered Salich to refrain from contacting Gorin. Salich testified that Roachefort told him to give Gorin such information as could be found in newspapers and periodicals, and try to obtain information from Gorin concerning the Japanese consulate. At any rate, after subsequent meetings and in March, 1938, Salich agreed to supply Gorin with certain information, on the theory that whatever information concerning the Japanese he gave to Gorin, it would benefit the United States as against the "common" enemy.

Davis was replaced as District Intelligence Officer on May 13, 1938 by one Zacharias. Roachefort was replaced as Assistant District Intelligence Officer on June 1, 1938.

Salich was in financial straits owing to marital difficulties and accepted a total of \$1,700 from Gorin for the information supplied to Gorin. Salich testified that the money received by him was considered a loan. Salich gave to Gorin the substance of the information contained in some 43 reports as related in the yellow copies previously mentioned.

On September 30, 1938, a salesman for a dry cleaning establishment took a suit belonging to Gorin, and in a pocket of the suit the salesman found an envelope containing a sheet of paper and a \$50 bill. The sheet of paper contained some typewriting and other writing. The salesman took the envelope to the Hollywood Police Station where a copy of the paper was made. The envelope and its contents were then given to Gorin's wife who had called at the cleaning establishment for it.

On December 10, 1938, several agents of the Federal Bureau of Investigation called at Salich's apartment and told him that they were making an investigation concerning information which he was supposed to have given Gorin. Salich agreed to, and did go to the office of the agents where he stated what he had done and identified the reports, the substance of which he had communicated to Gorin. The following day, Salich made a written statement containing some of the matters related above. Included in the statement was the following:

"Conscientiously and honestly I did not think that my actions, aside from being highly unethical, were inimical to the best interests of the United States, to which country I am extremely grateful for what it did for me and which country's citizenship I value \* \* \*

The reports mentioned above were not physically given to Gorin. Salich communicated the substance thereof to Gorin orally or in writing. The reports consisted principally of a relation of the movements of certain Japanese from one place to another, and activities thereof, such as photography, conferences and other matters. A few reports dealt with Japanese activities in Mexico, Mexican waters · and Central America, and a few reports concerned alleged communists and their activities. None of the reports contained any information regarding the army, the navy, any part thereof, their equipment, munitions, supplies or aircraft or anything pertaining thereto. One report named a number of Japanese "suspected" of being interested in intelligence work. Most of them, on their face, appear innocuous, there being no way to connect them with other material which the Naval Intelligence may have, so that the importance of the reports does not appear.

As illustrative of the information contained in the reports, we quote the report to Gorin made by Salich, found in Gorin's suit by the cleaning establishment's salesman:

"George Ohashi, of San Diego, is reported to have made a statement at a JACL meeting that he was not a fascist. Couple other members, Paul Nakadate and George Suzuki took esception to this remark and accused George Ohashi of being a communist and subsequently beat him up.

"Ohashi and his wife own a beauty shop in San Diego which was found burglarized one day and the place searched.

"Dr. M. M. Nakadate is dentis and is brother of Paul Nakadate.

"Their father is Y. Nakadate who lives in San Diego and who is listed in our cards as "radical"—pro-Japanese". Dr. N. M. Nakadate is borne in 1910; is member of United States Naval Reserve in dental corps and in 1935 did some training duty on board the USS Dorsey which is a destroyer. After completion of his sea duty he was attached to aviation unit of USNR, but because of his Japanese descent, it is evident, he is not being encouraged to continue his career with USNR.

"Bert Simmons a civilian employee on North Island, San Diego, which island houses Naval aviation. He was reported as a communist. "The report, however, comes from a private watchman employed by Nick Harris Private Patrol. This watchman holds a dishonorable discharge from the Navy and it is believed that he made the report to ingratiate himself with the Navy. Report turned over to San Diego for further action."

One of the reports contained information regarding the activities of Japanese fishing boats, and of an acid said to have been deposited in salt water with which it reacted and caused a steel cable and a steel hull of a ship to be corroded through chemical action. This report was dated June 27, 1938. Practically everything which was contained in the report appeared in a printed periodical subsequently.' Other issues of the same periodical contained information of the same general nature as that contained in the reports.'

The indictment was filed on January 11, 1939. The first count thereof charged Salich, Gorin, and the latter's wife with copying, taking, making and obtaining documents, writings and notes of matters connected with the national defense, and describing the reports above mentioned. The second count charged defendants with communicating, delivering and transmitting to Gorin as a representative of

<sup>&</sup>lt;sup>1</sup>Ken Magazine, July 27, 1939, p. 9.

<sup>&</sup>lt;sup>2</sup>Ken Magazine, Vol. 1, No. 1, p. 40, April 7, 1938; Ken Magazine, April 6, 1939.

the Soviet Union writings, notes, instruments and information relating to the national defense, and describing the same reports mentioned in the first count. The third count charged that the defendants conspired to communicate, deliver, transmit, and attempt to communicate, deliver and transmit to the Soviet Union and to a representative thereof, documents, writings, plans, notes, instruments and information relating to the national defense.

Each of the defendants demurred to the indictment, the demurrers all being overruled. Each of the defendants pleaded not guilty.

The trial court's instructions were comprehensive. As to the first count, the trial court instructed the jury that there were four elements to the crime therein charged: (1) the fact of taking or obtaining must be established; (2) there must be a purpose of obtaining information respecting the national defense; (3) there must be an intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of the Soviet Union; (4) the information so taken must, in fact, relate to the national defense.

The detailed instructions regarding the first two of these elements added little. As to the third element, the court below instructed the jury that appellee must "prove either an intent or a reason to-believe that the information was to be used either to the injury of the United States or to the advantage of" the Soviet Union; that the law would

be satisfied if appellee proved "beyond a reasonable doubt that both Salich, and Gorin had reason to believe that the information disclosed was to be used to the advantage of" the Soviet Union. The court also instructed the jury that they could consider the character of the information required, as to whether or not it was susceptible to use by the Soviet Union, and whether or not Salich knew facts from which he concluded, or reasonably should have concluded that the information could be used advantageously by the Soviet Union. The court below also charged the jury that if "there was no intent and no reason to believe on the part of either" Salich or Gorin, that "in so exchanging information that there would result an injury to the United States or advantage to" the Soviet Union, then the defendants must be acquitted.

As to the fourth element of the first count, the trial court instructed the jury that it was not required

leged to have been taken necessarily injure the United States or benefit any foreign nation. The document need not in fact be vitally important or actually injurious. The document or information must be, however, connected with or related to the national defense."

The court also instructed the jury as follows:

"You are instructed that the term 'national defense' includes all matters directly and reasonably connected with the defense of our

nation against its enemies. The first lines of defense naturally are the men, the ships and guns of the navy, the men, the planes and the guns of the air corps, and the men, forts and guns of the army. Behind these—but none the less necessary if the army and navy are to be kept in the field in wartime or well prepared in peactime—are those places and things which are essential to the storage of reserves, the inter-communication of armed forces, the transportation of war supplies, the reconditioning of war-worn materials and men, and the manufacture of war supplies \* \* \*

"You are instructed \* \* that for purposes of prosecution under these statutes, the information, documents, plans, maps, etc., connected with these places or things [mentioned in the statute] must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation \* \*

"You are instructed that in the second place the information, documents or notes must relate to those angles or phases of the instrumentality, place or thing which relates to the defense of our nation " "

"You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulnessefficiency or availability of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

"Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury \* \* \*"

The detailed instructions under the first count also, contained many examples to further explain the last element. The elements of the crime charged in the second count were stated by the court below:

(1) the fact of disclosure must be proved; (2) the disclosure must be made to representatives or citizens of the Soviet Union; (3) the guilty intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of the Soviet Union must be present; (4) the information so taken must, in fact, actually relate to the national defense. The detailed instructions as to each of these elements adds nothing to what has been related.

The court below instructed the jury to return a verdict that Gorin's wife was not guilty of the crimes charged in the first two counts. The jury acquitted Gorin's wife on the third count and convicted Gorin and Salich on all three counts, both of whom appealed from the judgment and sentence entered on the verdict.

The indictment is based on the Act of June 15, 1917, Ch. 30, 40 Stat. 217. It was entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes" and was divided into thirteen titles. The first title consisted of nine sections and is headed with the word "Espionage". All three counts of the indictment are based on provisions in the first title of the act.

Section 1 of the act, on which the first count was based, provides in part:

"That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation \* \* \* (b) \* \* \* copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense \* \* \* shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both."

<sup>\*</sup>See also: 34 USCA §1200, Article 4 "Fourth" and Article 5.

Section 2 of the act, on which the second count was based, provides in part:

"Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government \* \* \* or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years \* \* \*"

Section 4 of the act, upon which the third count is based provides as follows:

"If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy \* \* \*"

Section 2 also provided for increased penalties for violation thereof in time of war. Section 3 provided a crime for commission of acts only in time of war.

#### Construction of the Act.

Appellants contend that the words "respecting the national defense" and "connected with the national defense" as used in §1, and the words "relating to the national defense" as used in §2, should be given a military and naval connotation, and that they should be limited in their application to the places and things specifically enumerated in §1 of the act. To properly understand the contention it should be noted that §1(a) of the act, which is not in question here, makes it a felony to obtain information "concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base; coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored The contention is, in effect, that the words just quoted define "national defense", so that when §1(b) forbids the copying of a "document, writing, or note, of anything connected with the national defense", it forbids such copying only if the document, writing, or note relates to or concerns a "vessel, aircraft, work of defense", etc. as enumerated in §1(a).

To support the contention it is argued that §§1 and 2 are found in Title 50 of the United States Code entitled "War" and was therefore intended to apply only to persons who spy on the United States; that the rule of ejusdem generis, the legislative history, and grammatical incidents require such construction; and that any uncertainty in the act must be construed in favor of appellants.

. We think the contention is untenable. "The intention of the Congress is to be sought for primarily in the language used, and where this expresses an intention reasonably intelligible and plain it must be accepted without modification by resort to construction or conjecture". Thompson v. United States, 246 U.S. 547, 551. See also: Helvering v. City Bank Co., 296 U.S. 85, 89. It seems apparent beyond doubt, that §1 of the act specifies five different and separate crimes. Each crime is defined in a subsection ending with a semi-colon and preceded by a designation consisting of a letter contained in parentheses. Each is as separate as it would be if made a separate section in the act. There is no room for the application of rules of construction. None of these subsections refers to another. Nowhere is an intent manifested that "national defense" was actually defined in §1(a) or in any other subsection. In view of the plain meaning, we are not warranted in restricting the meaning of the words "national defense". Unquestionably, the

words were used in a broad sense with a flexible meaning. That meaning accords with the rule that "unless Congress has definitely indicated an intention that the words should be construed otherwise, we must apply them according to their usual acceptation". Avery v. Commissioner, 292 U.S. 210, 214. We think there is here no definite indication that a restricted meaning was intended.

What is or is not "connected with the national defense" is a question of fact for the determination of the jury. Like many words, what is meant by the use thereof may change from time to time. For example, the operation of an automobile in a particular way twenty years ago might have been negligence then, but not negligent now in view of the changes which have occurred since. So, particular things which were once "connected with the national defense" may have lost such connection. For example, the plans for making a muzzle-loading flintlock might have been at one time "connected with the national defense" but it is difficult to understand how it would be today when they are no longer used.

As in most jury cases, a question of law is present, i.e., whether the jury would be justified in inferring from the evidence that the fact existed.

We are not in accord with what may be said to be a contrary view as expressed in the instructions, where it is indicated that the information must relate to the places mentioned in subsection (a) of §1. However, since the instructions as given were favorable to appellants, they are in no position to allege error in that respect.

Constitutionality of the Statute.

It is urged that under such construction, the statute is unconstitutional because it "would fix no immutable standard of guilt to govern conduct and would give no fixed and definite meaning \* \* \* but would be subject to definition as to meaning by each court and jury". Violation of the Fifth and Sixth Amendments by the statute is urged. The Fifth Amendment prohibits deprivation of a person's life or liberty "without due process of law" and the Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right "to be informed of the nature and cause of the accusation".

Certain phases of the act have been considered, and the constitutionality thereof upheld. Schenck v. United States, 249 U.S. 47; Frohwerk v. United States, 249 U.S. 204; Abrams v. United States, 250 U.S. 616, 619. It is not at all clear that the questions raised here are open to decision, in view of the broad language of O'Connell v. United States, 253 U.S. 142, 147-148 and Milwaukee Pub. Co. v. Burleson, 255 U.S. 407, 409-410. However, in view of the fact that different sections of the act were involved in those cases, we will assume that the questions have not been definitely decided by the Supreme Court.

The so-called general rule relied on here, is stated in Connally v. General Const. Co., 269 U.S. 385, 391, as follows:

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with the ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

As early as United States v. Brewer, 139 U.S. 278, 288, it had been said that "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid". These rules, however, are subject to the same mischief which they seek to control, and do not aid in the solution of the question urged here. That conclusion necessarily follows the fact that many criminal statutes must be and are construed notwithstanding there are doubts as to their meaning. The rulings in particular cases must be considered.

The following statutes have been held sufficiently definite; denouncing contracts and arrangements

<sup>\*</sup>See also: Fox v. Washington, 236 U.S. 259, 277; Whitney v. California, 274 U.S. 357.

"reasonably calculated" to fix and regulate the price of commodities, and prohibiting acts which . "tend" to accomplish the prohibited results; prohibiting certain things which "prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade": requiring a proprietor or keeper of hotel, in case of fire, to do all in their power" to save guests; prohibiting. sheep owner from permitting sheep to graze on any cattle range previously upied by cattle, or upon any range "usually" occupied by any cattle grower as range for his cattle; prohibiting sales of meat falsely represented as "kosher" or as having been prepared of a product "sanctioned by the orthodox Hebrew religious requirements": requiring the quantity of the contents of a package to be marked on the outside thereof, provided that "reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations";10 and authorizing a state officer to "mutualize or reinsure the busi-

<sup>&</sup>lt;sup>5</sup>Waters-Pierce Oil Co. v. Texas (No. 1), 212 U.S. 86, 109.

Nash v. United States, 229 U.S. 373, 376.

<sup>&#</sup>x27;Miller v. Stahl, 239 U.S. 426, 421.

Omaechevarria v. Idaho, 246 U.S. 343.

<sup>&#</sup>x27;Hygrade Provision Co. v. Sherman, 266 U.S. 497, 501.

<sup>&</sup>lt;sup>10</sup>United States v. Shreveport Grain & El. Co., 287 U.S. 77.

ness of" an insurance company "or enter into rehabilitation agreements".11

On the other hand, the following statutes have been held too vague and indefinite; prohibiting the enhancement by combinations of the cost of any article above its "real value" which was construed to mean "market value under fair competition, and under normal market conditions";12 providing that it was unlawful for any person willfully to make any "unjust or unreasonable rate or charge" in handling or dealing in or with any necessaries;13 requiring payment to state employees of the "current rate" of per diem wages in the "locality"? where the work is performed;14 providing that it was not unlawful to market products at a "reasonable profit" by agreement or association, which could not otherwise be so marketed;15 and declaring that a person not engaged in any lawful occupation, "known" to be a member of any "gang" who had been convicted of a crime was a "gangster".10

In logic, the statute here involved could be said to be analogous to some of the cases involved in the first group, and to be analogous to some of those involved in the second group. No workable state-

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<sup>&</sup>lt;sup>11</sup>Neblett v. Carpenter, 305 U.S. 297, 303.

<sup>&</sup>lt;sup>12</sup>International Harvester Co. v. Kentucky, 234 U.S. 216; Collins v. Kentucky, 234 U.S. 634, 638.

<sup>&</sup>lt;sup>18</sup>United States v. Cohen Grocery Co., 255 U.S. 81.

<sup>&</sup>lt;sup>14</sup>Connally v. General Const. Co., 269 U.S. 385.

<sup>15</sup>Cline v. Frink Dairy Co., 274 U.S. 445, 456.

<sup>16</sup> Lanzetta v. New Jersey, 306 U.S. 451.

ment of differentiation is apparent from these decisions. Apparently the question has been decided in the above mentioned cases on the basis of appeal of the contention to the court in each individual case rather than by measurement with a definite rule. Because of the doubt as to the controlling group of cases, we assume that the rebuttable presumption of constitutionality17 has disappeared.18. However, the result is controlled by the rule that "It is incumbent, \* \* \* upon those who affirm the unconstitutionality of an act of Congress to show clearly that it is in violation of the provisions ofthe Constitution. It is not sufficient for them that they succeed in raising a doubt". Legal Tender Cases, 79 U.S. (12 Wall.) 457, 531. We hold that appellants have failed to carry the burden of proving unconstitutionality of the statutes involved. We add that the words of the statutes "national defense" are similar to the words "common defense" as used in §8, Article I of the Constitution.

The Evidence.

Appellants contend that the court erred in failing to direct a verdict in their favor, because of insufficiency of evidence. The applicable rule is that if there is substantial evidence to support the

<sup>&</sup>lt;sup>17</sup>Borden's Co. v. Baldwin, 293 U.S. 194, 209.

<sup>18</sup>Del Vecchio v. Bowers, 296 U.S. 280;

N. Y. Life Ins. Co. v. Gamer, 303 U.S. 161, 170-171:

Department of Water and Power v. Anderson, 9 Cir., 95 F(2d) 577, 583.

charges, then a peremptory instruction of acquittal should not be made, but it is a question for the jury to determine whether "the effect of the evidence was such as to overcome any reasonable doubt of guilt". Pierce v. United States, 252 U.S. 239, 251-252. Likewise, the effect and weight of the fair inferences to be drawn from the evidence for appellee is for the jury. Gunning v. Cooley, 281 U.S. 90, 94.

It is urged that the Naval Intelligence reports show on their face that they do not relate to the national defense. We think the contention cannot be sustained. It is unnecessary to state what inferences were properly deducible from all the reports. It is sufficient to consider one which is favorable to appellee. One of the reports named a number of. Japanese "suspected" of being interested in intelligence work. The jury could properly infer, we think, that it is highly important to the Navy to know possible spy suspects, and that it is vital that the foreign government be ignorant of the Navy's knowledge, because if such government was aware of the Navy's knowledge, it would, conceivably, replace such agents with others, or direct them to cease their activities and employ others. It is likewise inferable that if the agents were aware of the Navy's knowledge they would take steps to hide any activity which might lead to their arrest and eradication. It is obvious that the detection of spies is important in the event of war, as shown by the

extreme penalty meted out for such offense. We think the jury could properly conclude from these inferences that the report "related" to the national defense.

It is also urged that intent consists of two elements, i.e., will and knowledge, and that while there was evidence of will, there was no evidence that appellants knew these reports "related" to the national defense, or that their acts were unlawful. Whatever refinement in the definition of intent can be made, it is clearly not controlling here. The statute does not require unconditionally an intent, - for in the words of the statute "reason to believe" is said to be sufficient. The trial court properly so instructed. Considering the source of the information divulged, and the desire of Gorin to obtain it, we think the jury could properly infer that appellants had reason to believe that such information was "to be used to the injury of the United States, or to the advantage of" a foreign nation.

Error in the admission of the testimony of Commander Zacharias is also alleged. Zacharias was District Intelligence Officer, and a superior of Salich. His testimony was to the effect that he had specifically instructed Salich not to divulge any information. The court carefully instructed the jury that whatever Zacharias said was not to be taken as any statement of law, and that they should consider only the law communicated to them by the trial court. As so limited we see no error in the admission of the evidence. The proof was pertinent

because it had a bearing on Salich's "reason to believe".

It is also asserted that the exclusion of the Ken Magazine article was error. It is said that such article discloses that the information conveyed to Gorin was well known to the public and not confidential matters. While a serious question might arise in a case where the only information divulged was such as could be found in newspapers or periodicals available to the public, such question does not arise in this case, because the article in the periodical does not, and does not purport to relate all information contained in the reports in question. Assuming, without so deciding, that it was error to exclude the article insofar as it had a bearing on the same information contained in some. of the reports, the record affirmatively discloses that the error was not prejudicial because the information in the other reports is not contained in the article. See Lynch v. Oregon Lumber Co., 9 Cir., 108 F(2d) 283, 285-286.

We are, of course, conscious of the argument which could be made that the information divulged must not be of any importance or the Naval Intelligence Office would not have made the information available to the public by presenting the reports in evidence. Such procedure was a necessity in order to try the case. Whether it is sound, we think, is a question for the determination of Congress.

#### The Instructions.

The court's instruction as to the "national defense" is challenged, but we find no error therein except as stated above. It is urged that the instruction left it to the jury to speculate whether the information related to the national defense. As previously stated, we think the question is one of fact, and the decision thereof by the jury gives rise to no more or different speculation than the decision by a jury of any other fact question.

Finally, it is contended that the court erred in failing to give a requested instruction to the effect that if the jury acquitted Gorin's wife of the conspiracy charge, they must also acquit appellants, because if appellants conspired to convey the information to a representative of a foreign government, then there was no proof of anyone receiving the information from the transmitters.19 The judgment and sentence of the court makes it unnecessary to consider this contention. Gorin received a sentence of six years on the third count and six years on the second count, the terms to run concurrently. Salich received a sentence of four years on the third count and four years on the second count, the terms to run concurrently. It is therefore, immaterial whether the judgments and sen-

<sup>&</sup>lt;sup>19</sup>Appellants rely on: United States v. Katz, 271 U.S. 354; United States v. Dietrich, C.C. Neb., 126 F. 664; United States v. New York, etc. R.R. Co., C.C. N.Y., 146 F. 298.

tences on the third count were right or wrong. Brooks v. United States, 267 U.S. 432, 441.

Affirmed.

[Endorsed]: Opinion. Filed Apr. 22, 1940. Paul P. O'Brien, Clerk.

> United States Circuit Court of Appeals for the Ninth Circuit

> > No. 9135

MIKH'AIL NICHOLAS GORIN,

Appellant,

V8.

Ulited STATES OF AMERICA,

Appellee.

#### JUDGMENT

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered April 22, 1940. Paul P. O'Brien, Clerk. [Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UN-DER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seven hundred and thirty-six (736) pages, numbered from and including 1 to and including 736, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 8th day of May, 1940.

[Seal]

PAUL P. O'BRIEN.

Clerk.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH

No. 9136

HAFIS SALICH, Appellant,

V'S

United States of America, Appellee

#### JUDGMENT .

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this Cause be, and hereby is affirmed.

(Endorsed:) Judgment. Filed and entered April 22, 1940. Paul P. O'Brien, Clerk.

(8030)

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SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 87

ORDER ALLOWING CERTIORARI-Filed June 3, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM; 1940

No. 88

ORDER ALLOWING CERTIORARI-Filed June 3, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

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### Supreme Court of the United States

OCTOBER TERM, 1939.

1024-1025

MIKHAIL NICHOLAS GORIN,

Petitioner,

VS.

UNITED STATES OF AMERICA,

HAFIS SALICH,

Petitioner,

VS.

UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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### SUBJECT INDEX

Page
Introductory Statement 2
Opinion Below 2
Jurisdiction ~ 2
Questions Presented2
Statute Involved
Statement of the Case
Specification of Errors to be Urged9
Reasons for Granting the Petition 10
Conclusion 15
Appendix A 18
Sections 1, 2 and 4 of the Espionage Act.
Appendix B 422
Opinion of Circuit Court of Appeals.
TABLE OF CASES CITED
anzetta v. New Jersey, 306 U.S. 451 15
Legal Tender Cases, 79 U. S. (12 Wall.) 457 8
Inited States v. Cohen Grocery Company, 255 U.S. 81 15
STATUTES CITED
Espionage Act, Sections 1, 2, 4 (50 U.S. C. 31, 32, 34) 2, 3, 5, 9, 10-14, 16, 18-21
udicial Code, Section 240 (a) (28 U. S. C. 347)

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#### IN THE

### Supreme Court of the United States

OCTOBER TERM, 1939.

No. —

MIKHAIL NICHOLAS GORIN,

Petitioner.

VS.

UNITED STATES OF AMERICA,

HAFIS SALICH,

Petitioner.

VS.

UNITED STATES OF AMERICA,

### PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The above named Petitioners respectfully pray that a Writ of Certiorari issue to review the judgments of the United States Circuit Court of Appeals for the Ninth Circuit, entered in the above entitled causes on April 22, 1940, affirming the judgments and sentences of the United States District Court for the Southern District of California.

#### INTRODUCTORY STATEMENT

These two cases present identical questions; the Petitioners were indicted and convicted together, and their appeals were disposed of by the Circuit Court of Appeals in one opinion. There is one Transcript of the Record to which references are hereafter made.

#### **OPINION BELOW**

The opinion of the Circuit Court of Appeals (R. 710) is not yet reported. It is printed as an Appendix B to this Petition.

#### JURISDICTION

The judgments of the Circuit Court of Appeals were entered April 22, 1940 (R. 736). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925. (28 U.S.C. 347.)

#### QUESTIONS PRESENTED

The Petitioners were convicted on three counts of an indictment charging violations of Sections 1, 2 and 4 of the Act of June 15, 1917. (50 U.S.C. Sections 31, 32, 34.) The offenses charged related to espionage. The questions presented are (1) whether the admittedly wrongful acts of the defendants in revealing certain information in government files come within the criminal offenses specifically defined in the Espionage statute; or (2) whether they come within the criminal offenses which the government contends are defined in general prohibitions of the Espionage statute against disclosing information "connected with the national de-

fense" or "relating to the national defense"; or (3) whether the statute can be constitutionally construed, as it has been in the present cases, to make it a crime to reveal any information regarding anything which a jury might believe to be "connected with" or "relating to the national defense". Dependent upon the answer to these major questions are presented the incidental questions as to (1) whether the jury was properly instructed as to the law; or (2) whether the demurrers to the indictment should have been sustained; or (3) the Court should have directed a verdict in favor of defendants; or (4) whether upon the acquittal of Gorin's wife of the conspiracy charged the Petitioner-defendants must also be acquitted on the third or conspiracy count in the indictment:

#### STATUTE INVOLVED

The pertinent provisions of the Espionage Act (Title 50 U.S. C. Sections 31, 32, 34) are set forth in the Appendix A.

#### STATEMENT OF THE CASE

There is no substantial dispute about the facts constituting the alleged crimes for which Petitioners were convicted. Gorin is a citizen of the U.S.S.R. who, together with his wife, entered the United States on a passport in 1936 as a representative of Intourist, Moscow, to aid in the tourist business. He was employed by Intourist, Inc., a New York Corporation, which maintains an office at Los Angeles and had charge of that office. (R. 145.)

Salich was born in Russia; came to the United States

in 1923. After naturalization he served on the police force in Berkeley, California from 1930 to 1936 and began employment with the U. S. Naval Intelligence office on August 19, 1936. (R. 331.) He was employed as an investigator in the San Pedro office with the duty of collecting information and working on reports.

Gorin met Salich in 1938 and told him that he was interested in obtaining information about Japanese activities in that area for use in the event of trouble between Japan and Russia, but that Russia was friendly to the United States and he wanted no information that would be considered against the interest of the United States. (R. 169, 178, 336). Gorin said he was not interested in anything pertaining to the United States. Salich reported the suggestions of Gorin to his superior, Lieutenant Commander Roachefort (R. 337, 340, 135) and testified on the trial that he was instructed to keep up his contacts with Gorin, exchange harmless information and see what could be obtained in return. (R. 337).

Salich was in financial difficulties and as his acquaintance and contacts with Gorin increased, he accepted Gorin's offer of financial assistance, so that over a period from March to December 10, 1938, he received a total of \$1700. from Gorin (R. 350, 360), which he stated he took as a loan to be repaid as soon as possible; but he did not inform his superiors that he was receiving money from Gorin.

When Salich was interrogated for the first time by the F. B. I. office on December 10, 1938, he talked freely of his relationship with Gorin, revealing all the information he had turned over to Gorin, seeking to excuse the impropriety of his acts by asserting that there was no information in any way prejudicial to the United States. Salich had furnished information which came in part from the files and data of the Office of Naval Intelligence; he did not give Gorin any actual files or reports, but either oral information or typewritten notes. The reports can be classified as follows:

First: Reports concerning movements and activities of certain Japanese persons in this country, including civilians, military and naval officers, diplomatic and consular attaches, and civil or commercial representatives, some of whom were apparently suspected of espionage within the United States.

Second: Reports regarding suspected Japanese activities outside the United States, principally in Mexico and Mexican waters.

Third: Reports concerning certain alleged communists in the United States, whose activities were discussed.

There were no reports of any kind which in any way concerned or had any reference to the United States navy or army or any part of the naval or military establishment, or any place connected therewith, or anything whatever relating to the functioning, or means of functioning of the army or navy or any of the proscribed places or things specified in Section 31, of the Espionage Act.

The Opinion of the Circuit Court of Appeals definitely states:

"None of the reports contained any information regarding the army, the navy, any part thereof, their equipment, munitions, supplies of aircraft or

anything pertaining thereto.\* One report named a number of Japanese 'suspected' of being interested in intelligence work. Most of them, on their face, appear innocuous, there being no way to connect them with other material which the Naval Intelligence may have, so that the importance of the reports does not appear." (See Appendix p. 27)

The free and full disclosures by Salich of his relations with Gorin and all that he did, eliminated any substantial issue of fact from the trial and none is

presented or involved in this Petition.

There is, however, a very important issue of law as to the scope and constitutional construction of the Espionage Act. Upon this issue the trial court gave conflicting instructions and the Circuit Court of Appeals has expressly held that the law is in doubt and can only be settled by a ruling of the Supreme Court. The question presented, in brief, is: What are criminal offenses under the Espionage Act?

There is no question but that the acts of Salich, in revealing information of at least a semi-confidential character in the files of a government office, were wrongful; and the acts of Gorin in inducing such disclosures were wrongful. But since it would not be contended that any government employee could be convicted under the Espionage Act for improperly disclosing any of the contents of government files, the question presented by this case is: What disclosures of information are prohibited by the Espionage Act?

The trial court construed the law in two different ways and gave to the jury conflicting instructions—

<sup>\*</sup> Italics throughout petition are ours unless otherwise indicated.

first instructing the jury that disclosures of information to come within the prohibition of the Act must be information relating to the places and things specifically enumerated in Section 1 of the Act; that is, information concerning vessels, aircraft, naval stations, dock yards, canals, etc. This instruction was in accord with contentions of counsel for the defendants. The Court of Appeals held that such instructions were erroneous, but since they were "favorable to Appellants they are in no position to allege error in that respect".

However, the trial court negatived the favorable character of these instructions by leaving the question wholly to the jury to decide as to whether the information obtained in this case "concerned, regarded or was connected with the National defense". This, the court held, was "a question of fact solely for the determination of this jury". (Appendix p. 32)

The dominant legal issue was presented to the Court of Appeals in the language of counsel for defendants, which was quoted by the court in the following sentences from its opinion:

"It is urged that under such construction, the statute is unconstitutional because it 'would fix no immutable standard of guilt to govern conduct and would give no fixed and definite meaning but would be subject to definition as to meaning by each court and jury'". (Appendix p. 37)

The Court of Appeals in its opinion reviewed the two lines of cases in the Supreme Court—those holding that broad terms in certain statutes were sufficiently definite to meet constitutional requirements and those holding that the terms used in other statutes were too vague and indefinite. Then the court observed:

"In logic, the statute here involved could be said to be analogous to some of the cases involved in the first group, and to be analogous to some of those involved in the second group. No workable statement of differentiation is apparent from these decisions. Apparently the question has been decided in the above mentioned cases on the basis of appeal of the contention to the court in each individual case rather than by measurement with a definite rule. Because of the doubt as to the controlling group of cases, we assume that the rebuttable presumption of constitutionality has disappeared. However, the result is controlled by the rule that 'It is incumbent \* \* \* upon those who affirm the unconstitutionality of an act of Congress to show clearly that it is in violation of the provisions of the Constitution. It is not sufficient for them that they succeed in raising a doubt'. Legal Tender Cases, 79 U.S. (12 Wall.) 457, 531. We hold that appellants have failed to carry the burden of proving unconstitutionality of the statutes involved." (Appendix p. 40.)

Thus it appears that convictions of Petitioners have been upheld by the Circuit Court of Appeals on the somewhat unusual basis that it is doubtful whether the Espionage Act can be constitutionally construed to define the crime for which they have been convicted. But since the doubt is not a doubt regarding what they did, but a doubt as to whether what they did is a crime, the convictions are upheld upon the assumption that

the Supreme Court will resolve the doubt as to whether they should or should not have been convicted by giving an authoritative construction to the Espionage Act. Regardless of the interests of present Petitioners, it can be submitted that under these circumstances a review of the issues in this case and an authoritative determination of the law is a matter of greatest public importance, particularly in a time such as the present, when it is gravely important that the law regarding espionage should be clearly defined so that, on the one hand, it may not be violated ignorantly, and, on the other hand, there may be assured punishment for those whose activities may be actually harmful to the United States.

#### SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In affirming the judgments and sentences of the District Court.

2. In failing to find error in the instructions of the District Court.

3. In upholding the constitutionality of the construction of the Espionage Act by the District Court.

4. In not holding that the District Court erred in permitting the jury to determine what information might be regarded as concerned or connected with the national defense, the disclosure of which would be ir violation of the Espionage Act.

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#### REASONS FOR GRANTING THE PETITION

The Espionage Act, under which Gorin and Salich were convicted makes it a trime (Sec. 31. Title 50 U.S.C.) for anyone to obtain information concerning "any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense . . . (etc.); or "to copy . . . any sketch, photograph . . . document writing or note of anything connected with the national defense . . . (etc.).

A reading of the entire Section (See Appendix) makes it clear that, under the lower court's construction of the Act, it is made a crime for anyone to obtain any information anywhere which a jury may believe is "connected with the national defense" or "relating to the national defense"—if the jury also believes that accused had the "intent or reason to believe that the information to be obtained is to be used to the injury of the United States or to the advantage of any foreign nation."

We submit that the Act cannot be held constitutional unless it is construed so as to make it a crime only to obtain information as to the places and things specifically listed in Sec. 31 as connected with or related to the national defense. Thousands of persons are constantly collecting and reporting information about matters which are more or less closely "connected with or related to the national defense"—such as, appropriations for military purposes; manufacturing capacity for military supplies; productive capacity and reserve supplies of metals and foods essential to national de-

fense; the numbers, equipment and condition of our armed forces; the financial strength and general economic condition of particular industries and of the

country as a whole.

It must be evident that, while enormous quantitic of such information are being freely collected and published in America, it cannot be lawful and praiseworthy for patriotic organizations, business men, and newspapers to use such information, for example, in criticisms of the government (which many a jury of twelve men might think injurious to the United States, or certainly "to the advantage of any foreign nation")—but at the same time a criminal offense for some foreign agent to obtain and transmit it to his government.

The Opinion of the Circuit Court of Appeals further explains the harmless character of the information dis-

closed in the present case, as follows:

"One of the reports contained information regarding the activities of Japanese fishing boats, and of an acid said to have been deposited in salt water with which it reacted and caused a steel cable and a steel hull of a ship to be corroded through chemical action. This report was dated June 27, 1938. Practically everything which was contained in the report appeared in a printed periodical subsequently. (Ken Magazine, July 27, 1939.) Other issues of the same periodical contained information of the same general nature as that contained in the reports. (Ken Magazine, Vol. 1, No. 1, p. 40, April 7, 1938; Ken Magazine, April 6, 1939.)" (See Appendix p. 28.)

Our government is a public operation. Information

about all government activities, all information collected by the government and general information about matters of public concern, are open to public consideration *unless* by specific laws certain matters are defined as secret and disclosures are specifically prohibited.

There are obviously many matters connected with or relating to the national defense which should be kept secret. Perhaps all the files in the war and navy departments—all official information in these departments—should be kept secret except for disclosures expressly required or permitted by law.

But the truth is that the Congress has never been willing to enact such laws—even in time of war—because of the belief that public information and discussion of many matters connected with or relating to the national defense are essential to the national defense of a free government.

It is surprising to find no reference to the history of the Espionage Act in the Opinion of the Circuit Court of Appeals. In the brief of Petitioner-Appellant Gorin, extended consideration was given to the history of the Act and it was there shown that although the statute was passed in time of war there was a frequently expressed intention to avoid general terms and broad definitions under which too much power might be lodged with executive officials and too little information available to the public.

Among other things it was shown in this brief (pages 31-44) that a broad definition of the term "national defense" was stricken out of the bill by the Conference Committee and the specific list of places and things now in Sec. 31 was added for the reason explained by the Conference Committee as follows:

"Section 1 sets out the places connected with the national defense to which the prohibitions of the Section apply, while a similar provision of the House bill designates such places in general terms". (Conference Report H. R. 65, 65th Congress, 1st Session.)

Also the Conference report explained significantly the addition of another Section (now Section 36), which provides in part as follows:

"The President in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title; Provided, That he shall determine that information with respect thereto would be prejudicial to the national defense."

The Conference Report said about this Section:

"It was adopted because of the changes made in Section 1 and for the further reason that Section 1202 of the House Bill, which gave the words 'national defense' a broad meaning, was stricken out."

The legislative history of the Espionage Act therefore shows that changes in the Act as it passed the House were deliberately made for the very purpose of preventing the Act from being given such a broad construction as it has now received.

As previously pointed out, the trial court partially accepted the construction of the Act now urged on the

basis of its history, but then negatived the value of the early instructions to the jury by leaving it wholly to the jury to determine whether the information disclosed in this case "concerned, regarded or was connected with the national defense" and also instructed the jury that it was not essential "that the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation". So the defendants were tried and convicted on the theory that the Espionage Act defined it to be a crime (and constitutionally could define it to be a crime) if any person should obtain any information which a jury might believe to be connected with or relating to the national defense, if the informant or procurer had reason to believe that the information would be "to the advantage of a foreign nation", regardless of whether it was to be used to the injury of the United States.

There are two vital objections to any such construc-

tion of the Espionage Act:

First: The Act need not be so construed and in the

light of its history ought not to be so construed.

Second: If the Act were so construed, it would be unconstitutional because it would be impossible for anyone to obtain or disclose information regarding matters which are well known and publicly discussed throughout the United States, without the risk of being convicted of a felonious crime, if a jury should believe that such information was connected with or related to the national defense and was obtained or disclosed to the advantage of some other nation.

The necessary brevity of this Petition will not permit a review of the two lines of cases summarized in the Opinion of the Circuit Court of Appeals, but two quotations from leading cases will make Petitioners' contention quite clear.

"Therefore, because the law is vague, indefinite, and uncertain and because it fixes no immutable standard of guilt, but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform defendant of the nature and cause of the accusation against him, I think it is unconstitutionally invalid, and that the demurrer offered by the defendant ought to be sustained".

United States v. Cohen Grocery Company, 255 U.S. 81.

"No one may be required at peril of life, liberty and property to speculate as to penal statutes. All are entitled to be informed as to what the state commands or forbids. \* \* \* And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning, and differ as to its application, violates the first essential of due process of law".

Lanzetta v. New Jersey, 306 U.S. 451.

#### CONCLUSION

We submit that the Opinion of the Circuit Court of Appeals, printed in the Appendix, amply demonstrates the need for a review in this case and for an authoritative construction of the Espionage Act by the Supreme Court. The Opinion makes a fair statement of the facts and fairly states the doubts of the court as to whether the Act as construed in the lower court would be constitutional.

We submit that the Act can be construed as a constitutional enactment and that such a construction should be given to it. It is evident, however, that under such a constitutional construction the defendants could not and should not have been convicted. They were entitled to have a verdict directed in their favor because of insufficiency of evidence to show any violation of the Act properly construed.

In concluding our Petition we should emphasize that we are not seeking to exculpate Petitioners of any wrong-doing or to suggest that it might not be made an offense to reveal confidential information in government files.\* But we have here a case where information taken from government records was admittedly of such a harmless character that the man obtaining and the man revealing it would be justified in assuming them-

selves innocent of any criminal offense.

Violation of Sec. 31 of the Espionage Act is punishable by fine or imprisonment for more than two years or both. Violation of Section 32 is punishable by imprisonment for not more than twenty years, except that in time of war it may be punishable by death, or by imprisonment for not more than thirty years. Felonies so punishable should certainly be clearly defined. Petitioner Gorin received a sentence of six years on each of two counts; and Salich received a sentence of four years on each of two counts; the sentences in both cases to run concurrently.

Even if one felt that their wrongful acts should be punished, notwithstanding the fact that no injury was done to anyone and no harm to the interests of the

<sup>\*</sup> U. S. Naval Regulations prohibit such disclosures; but significantly do not refer to any criminal penalties for violation of this prohibition.

United States, nevertheless the admitted action of Salich in notifying his superior officer when he was first approached, and his subsequent conduct, all show clearly that he, as a trained government employee, familiar with the provisions of the Espionage Act, could have had no idea that he was violating the Act and committing a felony, which would subject him to the practical certainty of a heavy prison sentence. That which he did was not defined as a crime by any law made plain to "men of common intelligence".

There is the gravest danger, not only to unintentional law-breakers but to the public generally, in defining effenses of this character in such vague terms that in times of stress and public excitement large numbers of persons may be subjected to criminal prosecutions for actions which heretofore had been regarded as either minor derelictions or entirely innocent exercises of a citizen's right to know how his government is being carried on. The correct and constitutional construction of the Espionage Act, therefore, presents an issue of great public importance which we believe merits the consideration of this Court. Wherefore, we submit that the petition for writ of certiorari should be granted.

Respectfully submitted:

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#### APPENDIX A

Sections 1, 2 and 4 of Espionage Act. (Sections 31, 32, 34, Title 50 U. S. C.

#### Section 31:

"Unlawfully obtaining or permitting to be obtained information affecting national defense. Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made. prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section 36 of this title; or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue

print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or (c) whoever, for the purpose aforesaid, receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts or induces or aids another to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this title; or (d) whoever, lawfully or unlawfully having possession of, access to, control over, or being intrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note relating to the national defense, wilfully communicates or transmits or attempts to communicate or transmit the same to any person not entitled to receive it, or wilfully retains the same and fails to deliver it on demand to the officer or employee of the United States, entitled to receive it; or (e) whoever, being intrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, or information, relating to the national defense, through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost stolen, abstracted, or destroyed, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both. (June 15, 1917, c. 30. Title I, Sec. 1, 40 Stat. 217.)"

#### Section 32:

"Unlawfully disclosing information affecting national defense. Whoever, with the intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided. That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with,

or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years. (June 15, 1917, c. 30, Title I, Sec. 2, 40 Stat. 218.)"

#### Section 34:

"Conspiracy to violate preceding sections. If two or more persons conspire to violate the provisions of sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this chapter shall be punished as provided by section 88 of Title 18. (June 15, 1917, c. 30, Title I, Sec. 4, 40 Stat. 219.)"

#### APPENDIX B OPINION OF THE CIRCUIT COURT OF APPEALS APRIL 22, 1940.

#### IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MIKHAIL NICHOLAS GORIN,

Appellant,

No. 9135

THE UNITED STATES OF AMERICA.

Appellee.

Apr. 22, 1940

HAFIS SALICH,

Appellant.

No. 9136

THE UNITED STATES OF AMERICA.

Appellee.

Upon Appeals from the District Court of the United States for the Southern District of California, Central Division.

Before: GARRECHT, HANEY and HEALY, Circuit Judges.

HANEY, Circuit Judge.

Appellants challenge judgments and sentences rendered against them after conviction on three counts of an indictment. The first count charged violation of §1 of the Act of June 15, 1917, Ch. 30, 40 Stat. 217 (50 USCA §31); the second count charged violation of §2 of that act (50 USCA §32); and the third count charged violation of §4 of that act (50 USCA §34). Generally speaking, these offenses relate to espionage.

One branch of the Navy service is the Naval Intelligence Office. Headquarters for the Eleventh Naval District are at San Diego, the intelligence office there being in charge of a District Intelligence Officer. A branch office is located at San Pedro and is in charge of an Assistant District Intelligence Officer. The investigators employed at the San Pedro office make their reports orally or in writing. The Assistant District Intelligence Officer then digests and evaluates the information and dictates the report to the Chief Yeoman-a secretarial employee. The latter, in writing the report on the typewriter, makes an original, three yellow copies and one green copy. These reports are numbered consecutively. One yellow copy and one green copy are retained in the San Pedro office and the remaining copies are sent to the San Diego office.

Appellant Salich was born in Moscow, Russia, on May 24, 1905, and lived there until 1917, when he moved with his parents to Kazen which is about 700 miles east of Moscow. He then went to Manchuria in 1920, to Yokohama, Japan, 1921, and to the United States in 1923. He became a naturalized citizen of the United States, and was employed by the Berkeley Police Department as an active officer from July 1, 1930 until August 15, 1936. In 1935, Salich met one Aliavdin, Vice Consul for the Union of Soviet Socialist Republics (hereafter called the Soviet Union) in San Francisco, and thereafter saw him a number of times. In 1936, Salich made an application for a position with the United States Maval Intelligence Office. A letter from San Diego, dated August 10, 1936, advised Salich of his

appointment, and he reported for work in San Pedro on August 19, 1936. At that time one Davis was District Intelligence Officer and one Roachefort was Assistant District Intelligence Officer. Salich thereafter saw Aliavdin in Los Angeles. Aliavdin knew that he was working for the Naval Intelligence Office.

Salich was an investigator and reported the results of his investigations to the Assistant District Intelligence Officer. He was expected to read the yellow copies of the reports which were kept in the Chief Yeoman's desk, in order to be familiar with the progress of investigations.

Appellant Gorin and his wife are citizens of the Soviet Union, and arrived in this country on January 10, 1936, under a passport issued by the Soviet Union. He then testified before a Board of Special Inquiry that he was to be employed in the Entourist Department of the Amtorg Trading Corporation, his salary to be paid by the Russian government through such corporation. His work was the organization of tourist parties from America to the Soviet Union. He was stationed at Los Angeles. Roachefort instructed Salich to contact someone in the Soviet Consulate regarding the activities of a Soviet official named Kaganovich in July or August, 1937. Salich eventually contacted Gorin and had a conversation with him. Later during that year Gorin called at Salich's home, in the latter's absence, and told Salich's wife that he had a letter for Salich. A day or so afterward, Salich called at Gorin's home, found him busy, but saw him two or three days later, when he received the letter, written by Aliavdin introducing Gorin to Salich. At this meeting Gorin mentioned his interest in matters pertaining to Japanese activities and Japanese activities only. Salich told Gorin that he did not believe that he had any information which would be of benefit to anyone.

Salich reported the conversation to Roachefort. There was testimony that Roachefort ordered Salich to refrain from contacting Gorin. Salich testified that Roachefort told him to give Gorin such information as could be found in newspapers and periodicals, and try to obtain information from Gorin concerning the Japanese consulate. At any rate, after subsequent meetings and in March, 1938, Salich agreed to supply Gorin with certain information, on the theory that whatever information concerning the Japanese he gave to Gorin, it would benefit the United States as against the "common" enemy.

Davis was replaced as District Intelligence Officer on May 13, 1938 by one Zacharias. Roachefort was replaced as Assistant District Intelligence Officer on June 1, 1938.

Salich was in financial straits owing to marital difficulties and accepted a total of \$1,700 from Gorin for the information supplied to Gorin. Salich testified that the money received by him was considered a loan. Salich gave to Gorin the substance of the information contained in some 43 reports as related in the yellow copies previously mentioned.

On September 30, 1938, a salesman for a dry cleaning establishment took a suit belonging to Gorin, and in a pocket of the suit the salesman found an envelope containing a sheet of paper and a \$50 bill. The sheet of paper contained some typewriting and other writing. The salesman took the envelope to the Hollywood Police Station where a copy of the paper was made. The en-

velope and its contents were then given to Gorin's wife who had called at the cleaning establishment for it.

On December 10, 1938, several agents of the Federal Bureau of Investigation called at Salich's apartment and told him that they were making an investigation concerning information which he was supposed to have given Gorin. Salich agreed to, and did go to the office of the agents where he stated what he had done and identified the reports, the substance of which he had communicated to Gorin. The following day, Salich made a written statement containing some of the matters related above. Included in the statement was the following:

"Conscientiously and honestly I did not think that my actions, aside from being highly unethical, were inimical to the best interests of the United States, to which country I am extremely grateful for what it did for me and which country's citizenship I value \* \* \*

"I sincerely state that at no time did I furnish Gorin any information which in my opinion would harm this country; on the contrary, I saw some reason to Gorin's argument that we had common cause, and by helping them I would also be indirectly helping our own cause \* \* \* "

The reports mentioned above were not physically given to Gorin. Salich communicated the substance thereof to Gorin orally or in writing. The reports consisted principally of a relation of the movements of certain Japanese from one place to another, and activities thereof, such as photography, conferences and other matters. A few reports dealt with Japanese activities

in Mexico, Mexican waters and Central America, and a few reports concerned alleged communists and their activities. None of the reports contained any information regarding the army, the navy, any part thereof, their equipment, munitions, supplies or aircraft or anything pertaining thereto. One report named a number of Japanese "suspected" of being interested in intelligence work. Most of them, on their face, appear innocuous, there being no way to connect them with other material which the Naval Intelligence may have, so that the importance of the reports does not appear.

As illustrative of the information contained in the reports, we quote the report to Gorin made by Salich, found in Gorin's suit by the cleaning establishment's

salesman:

"George Ohashi, of San Diego, is reported to have made a statement at a JACL meeting that he was not a fascist. Couple other members, Paul Nakadate and George Suzuki took esception to this remark and accused George Ohashi of being a communist and subsequently beat him up.

"Ohashi and his wife own a beauty shop in San Diego which was found burglarized one day and the place searched.

"Dr. M. M. Nakadate is dentis and is brother of Paul Nakadate.

"Their father is Y. Nakadate who lives in San Diego and who is listed in our cards as "radical"—pro-Japanese." Dr. N. M. Nakadate is borne in

1910; is member of United States Naval Reserve in dental corps and in 1935 did some training duty on board the USS Dorsey which is a destroyer. After completion of his sea duty he was attached to aviation unit of USNR, but because of his Japanese descent, it is evident, he is not being encouraged to continue his career with USNR.

"Bert Simmons a civilian employee on North Island, San Diego, which island houses Naval aviation. He was reported as a communist.

"The report, however, comes from a private watchman employed by Nick Harris Private Patrol. This watchman holds a dishonorable discharge from the Navy and it is believed that he made the report to ingratiate himself with the Navy. Report turned over to San Diego for further action."

One of the reports contained information regarding the activities of Japanese fishing boats, and of an acid said to have been deposited in salt water with which it reacted and caused a steel cable and a steel hull of a ship to be corroded through chemical action. This report was dated June 27, 1938. Practically everything which was contained in the report appeared in a printed periodical subsequently. Other issues of the same periodical contained information of the same general nature as that contained in the reports.

The indictment was filed on January 11, 1939. The first count thereof charged Salich, Gorin, and the lat-

<sup>&</sup>lt;sup>1</sup> Ken Magazine, July 27, 1939, p. 9.

<sup>&</sup>lt;sup>3</sup> Ken Magazine, Vol. 1, No. 1, p. 40, April 7, 1938; Ken Magazine, April 6, 1939.

ter's wife with copying, taking, making and obtaining documents, writings and notes of matters connected with the national defense, and describing the reports above mentioned. The second count charged defendants with communicating, delivering and transmitting to Gorin as a representative of the Soviet Union writings, notes, instruments and information relating to the national defense, and describing the same reports mentioned in the first count. The third count charged that the defendants conspired to communicate, deliver, transmit, and attempt to communicate, deliver and transmit to the Soviet Union and to a representative thereof, documents, writings, plans, notes, instruments and information relating to the national defense.

Each of the defendants demurred to the indictment, the demurrers all being overruled. Each of the defendants pleaded not guilty.

The trial court's instructions were comprehensive. As to the first count, the trial court instructed the jury that there were four elements to the crime therein charged: (1) the fact of taking or obtaining must be established; (2) there must be a purpose of obtaining information respecting the national defense; (3) there must be an intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of the Soviet Union; (4) the information so taken must, in fact, relate to the national defense.

The detailed instructions regarding the first two of these elements added little. As to the third element, the court below instructed the jury that appellee must "prove either an intent or a reason to believe that the information was to be used either to the injury of the United States or to the advantage of" the Soviet Union; that the law would be satisfied if appellee proved "beyond a reasonable doubt that both Salich and Gorin had reason to believe that the information disclosed was to be used to the advantage of" the Soviet Union. court also instructed the jury that they could consider the character of the information required, as to whether or not it was susceptible to use by the Soviet Union, and whether or not Salich knew facts from which he concluded, or reasonably should have concluded that the information could be used advantageously by the Soviet Union. The court below also charged the jury that if "there was no intent and no reason to believe on the part of either" Salich or Gorin, that "in so exchanging information that there would result an injury to the United States or advantage to" the Soviet Union, then the defendants nust be acquitted.

As to the fourth element of the first count, the trial court instructed the jury that it was not required

"\*\* that the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation. The document need not in fact be vitally important or actually injurious. The document or information must be, however, connected with or related to the national defense."

The court also instructed the jury as follows:

"You are instructed that the term 'national defense' includes all matters directly and reasonably connected with the defense of our nation against its enemies. The first lines of defense naturally, are the men, the ships and guns of the navy, the men, the planes and the guns of the air corps, and the men, forts and guns of the army. Behind these—but none the less necessary if the army and navy are to be kept in the field in wartishe or well prepared in peacetime—are those places and things which are essential to the storage of reserves, the inter-communication of armed forces, the transportation of war supplies, the reconditioning of warworn materials and men, and the manufacture of war supplies \* \* \*

"You are instructed \* \* \* that for purposes of prosecution under these statutes, the information, documents, plans, maps, etc., connected with these places or things [mentioned in the statute] must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation \* \* \*

"You are instructed that in the second place the information, documents or notes must relate to those angles or phase of the instrumentality, place or thing which relates to the defense of our nation \* \* \*

"You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

"Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury \* \* \* "

The detailed instructions under the first count also contained many examples to further explain the last element. The elements of the crime charged in the second count were stated by the court below: (1) the fact of disclosure must be proved; (2) the disclosure must be made to representatives or citizens of the Soviet Union; (3) the guilty intent or reason to believe that the information so obtained was to be used to the injury of the United States or to the advantage of the Soviet Union must be present; (4) the information so taken must, in fact, actually relate to the national defense. The detailed instructions as to each of these elements adds nothing to what has been related.

The court below instructed the jury to return a verdict that Gorin's wife was not guilty of the crimes charged in the first two counts. The jury acquitted Gorin's wife on the third count and convicted Gorin and Salich on all three counts, both of whom appealed from the judgment and sentence entered on the verdict.

The indictment is based on the Act of June 15, 1917, Ch. 30, 40 Stat. 217. It was entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes" and was divided into thirteen titles. The first title consisted of nine sections and is headed with the word "Espionage". All three counts of the indictment are based on provisions in the first title of the act.

<sup>\*</sup> See also: 34 USCA §1200, Article 6 "Fourth" and Article 5.

Section 1 of the act, on which the first count was based, provides in part:

"That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation \* \* \* (b) \* \* \* copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense \* \* \* shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both."

Section 2 of the act, on which the second count was based, provides in part:

"Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government \* \* or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national de-

fense, shall be punished by imprisonment for not more than twenty years \* \* \* "

Section 4 of the act, upon which the third count is based, provides as follows:

"If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy \* \* \* "

Section 2 also provided for increased penalties for violation thereof in time of war. Section 3 provided a crime for commission of acts only in time of war.

#### CONSTRUCTION OF THE ACT.

Appellants contend that the words "respecting the national defense" and "connected with the national defense" as used in §1, and the words "relating to the national defense" as used in §2, should be given a military and naval connotation, and that they should be limited in their application to the places and things specifically enumerated in §1 of the act. To properly understand the contention it should be noted that §1(a) of the act, which is not in question here, makes it a felony to obtain information "concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, tele-

graph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored \* \* \* " The contention is, in effect, that the words just quoted define "national defense", so that when §1(b) forbids the copying of a "document, writing, or note, of anything connected with the national defense", it forbids such copying only if the document, writing, or note relates to or concerns a "essel, aircraft, work of defense", etc. as enumerated in §1(a).

To support the contention it is argued that §§1 and 2 are found in Title 50 of the United States Code entitled "War" and was therefore intended to apply only to persons who spy on the United States; that the rule of ejusdem generis, the legislative history, and grammatical incidents require such construction; and that any uncertainty in the act must be construed in favor of appellants.

We think the contention is untenable. "The intention of the Congress is to be sought for primarily in the language used, and where this expresses an intention reasonably intelligible and plain it must be accepted without modification by resort to construction or conjecture". Thompson v. United States, 246 U.S. 547, 551. See also: Helvering v. City Bank Co., 296 U.S. 85, 89. It seems apparent beyond doubt, that §1 of the act specifies five different and separate crimes. Each

crime is defined in a subsection ending with a semicolon and preceded by a designation consisting of a letter contained in parentheses. Each is as separate as it would be if made a separate section in the act. There is no room for the application of rules of construction. None of these subsections refers to another. Nowhere is an intent manifested that "national defense" was actually defined in §1(a) or in any other subsection. In view of the plain meaning, we are not warranted in restricting the meaning of the words "national defense". Unquestionably, the words were used in a broad sense with a flexible meaning. That meaning accords with the rule that "unless Congress has definitely indicated an intention that the words should be construed otherwise, we must apply them acording to their usual acceptation." Avery v. Commissioner, 292 U.S. 210, 214. We think there is here no definite indication that a restricted meaning was intended.

What is or is not "connected with the national defense" is a question of fact for the determination of the jury. Like many words, what is meant by the use thereof may change from time to time. For example, the operation of an automobile in a particular way twenty years ago might have been negligence then, but not negligent now in view of the changes which have occurred since. So, particular things which were once "connected with the national defense" may have lost such connection. For example, the plans for making a muzzle loading flintlock might have been at one time "connected with the national defense" but it is difficult to understand how it would be today when they are no longer used.

As in most jury cases, a question of law is present,

i.e., whether the jury would be justified in inferring from the evidence that the fact existed.

We are not in accord with what may be said to be a contrary view as expressed in the instructions, where it is indicated that the information must relate to the places mentioned in subsection (a) of §1. However, since the instructions as given were favorable to appellants, they are in no position to allege error in that respect.

#### CONSTITUTIONALITY OF THE STATUTE

It is urged that under such construction, the statute is unconstitutional because it "would fix no immutable standard of guilt to govern conduct and would give no fixed and definite meaning \* \* \* but would be subject to definition as to meaning by each court and jury". Violation of the Fifth and Sixth Amendments by the statute is urged. The Fifth Amendment prohibits deprivation of a person's life or liberty "without due process of law" and the Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right "to be informed of the nature and cause of the accusation".

Certain phases of the act have been considered, and the constitutionality thereof upheld. Schenck v. United States, 249 U.S. 47; Frohwerk v. United States, 249 U.S. 204; Abrams v. United States, 250 U.S. 616, 619. It is not at all clear that the questions raised here are open to decision, in view of the broad language of O'Connell v. United States, 253 U.S. 142, 147-148 and Milwaukee Pub. Co. v. Burleson, 255 U.S. 407, 409-410. However, in view of the fact that different sections of the act were involved in those cases, we will assume

that the questions have not been definitely decided by the Supreme Court.

The so-called general rule refied on here, is stated in Connally v. General Const. Co., 269 U.S. 385, 391, as follows:

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with the ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first e sential of due process of law \* \* \*"

As early as United States v. Brewer, 139 U.S. 278, 288, it had been said that "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid". These rules, however, are subject to the same mischief which they seek to control, and do not aid in the solution of the question urged here. That conclusion necessarily follows the fact that many criminal statutes must be and are construed notwithstanding there are doubts as to their meaning. The rulings in particular cases must be considered.

The following statutes have been held sufficiently definite; denouncing contracts and arrangements "reasonably calculated" to fix and regulate the price of com-

<sup>\*</sup>See also: Fox v. Washington, 286 U.S. 259, 277; Whitney v. California, 274 U.S. 357.

modities, and prohibiting acts which "tend" to accomplish the prohibited results; prohibiting certain things which "prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade"; requiring a proprietor or keeper of hotel, in case of fire, to "do all in their power" to save guests;" prohibiting sheep owner from permitting sheep to graze on any cattle range previously occupied by cattle, or upon any range "usually" occupied by any cattle grower as range for his cattle; prohibiting sales of meat falsely represented as "kosher" or as having been prepared of a product "sanctioned by the orthodox Hebrew religious requirements"; requiring the quantity of the contents of a package to be marked on the outside thereof, provided that "reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations":10 and authorizing a state officer to "mutualize or reinsure the business of" an insurance company "or enter into rehabilitation agreements".11

On the other hand, the following statutes have been held too vague and indefinite: prohibiting the enhancement by combinations of the cost of any article above its "real value" which was construed to mean "market value under fair competition, and under normal market conditions";12 providing that it was unlawful for any person willfully to make any "unjust or unreasonable

<sup>\*</sup>Waters-Pierce Oil Co. v. Texas (No. 1), 212 U.S. 85, 109.

\*Nash v. United States, 229 U.S. 373, 376.

\*Miller v. Stahl, 239 U.S. 426, 431.

\*Omaechevarria v. Idaho, 246 U.S. 343.

\*Hygrade Provision Co. v. Sherman, 266 U.S. 497, 501.

\*United States v. Shreveport Grain & El. Co., 287 U.S. 77.

\*Neblett v. Carpenter, 305 U.S. 297, 303.

<sup>&</sup>quot;International Harvester Co. v. Kentucky, 284 U.S. 216; Collins v. Kentucky, 284 U.S. 634, 638.

rate or charge" in handling or dealing in or with any necessaries; requiring payment to state employees of the "current rate" of per diem wages in the "locality" where the work is performed; providing that it was not unlawful to market products at a reasonable profit by agreement or association, which could not otherwise be so marketed; and declaring that a person not engaged in any lawful occupation, "known" to be a member of any "gang" who had been convicted of a crime was a "gangster".

In logic, the statute here involved could be said to be analogous to some of the cases involved in the first group, and to be analogous to some of those involved in the second group. No workable statement of differ entiation is apparent from these decisions. Apparently the question has been decided in the above mentioned cases on the basis of appeal of the contention to the court in each individual case rather than by measurement with a definite rule. Because of the doubt as to the controlling group of cases, we assume that the rebuttable presumption of constitutionality" has disappeared." However, the result is controlled by the rule that "It is incumbent \* \* \* upon those who affirm the unconstitutionality of an act of Congress to show clearly that it is in violation of the provisions of the Constitution. It is not sufficient for them that they succeed in raising a doubt". Legal Tender Cases, 79

<sup>&</sup>quot;United States v. Cohen Grocery Co., 255 U.S. 81.

<sup>&</sup>lt;sup>24</sup> Connally v. General Const. Co., 269 U.S. 385.

<sup>&</sup>lt;sup>2</sup> Cline v. Frink Dairy Co., 274 U.S. 445, 456.

<sup>&</sup>quot;Lanzetta v.' New Jersey, 306 U.S. 451.

<sup>&</sup>quot; Bordeh's Co. v. Baldwin, 293 U.S. 194, 209.

Del Vecchio v. Bowers, 296 U.S. 280; N. Y. Life Ins. Co. v. Gamer, 303 U.S. 161, 170-171; Department of Water and Power, v. Anderson, 9 Cir., 95 F(2d) 577, 583.

U.S. (12 Wall.) 457, 531. We hold that appellants have failed to carry the burden of proving unconstitutionality of the statutes involved.

We add that the words of the statutes "national defense" are similar to the words "common defence" as

used in §8, Article I of the Constitution.

#### THE EVIDENCE

Appellants contend that the court erred in failing to direct a verdict in their favor, because of insufficiency of evidence. The applicable rule is that if there is substantial evidence to support the charges, then a peremptory instruction of acquittal should but be made, but it is a question for the jury to determine whether "the effect of the evidence was such as to overcome any reasonable doubt of guilt". Pierce v. United States, 252 U.S. 239, 251-252. Likewise, the effect and weight of the fair inferences to be drawn from the evidence for appellee is for the jury. Gunning v. Cooley, 281 U.S. 290, 94.

It is urged that the Naval Intelligence reports show on their face that they do not relate to the national defense. We think the contention cannot be sustained. It is unnecessary to state what inferences were properly deducible from all the reports. It is sufficient to consider one which is favorable to appellee. One of the reports named a number of Japanese "suspected" of being interested in intelligence work. The jury could properly infer, we think, that it is highly important to the Navy to know possible spy suspects, and that it is vital that the foreign government be ignorant of the Navy's knowledge, because if such government was aware of the Navy's knowledge, it would, conceivably,

replace such agents with others, or direct them to cease their activities and employ others. It is likewise inferable that if the agents were aware of the Navy's knowledge they would take steps to hide any activity which might lead to their arrest and eradication. It is obvious that the detection of spies is important in the event of war, as shown by the extreme penalty meted out for such offense. We think the jury could properly conclude from these inferences that the report "related" to the national defense.

It is also urged that intent consists of two elements, i.e, will and knowledge, and that while there was evidence of will, there was no evidence that appellants knew these reports "related" to the national defense, or that their acts were unlawful. Whatever refinement in the definition of intent can be made, it is clearly not controlling here. The statute does not require unconditionally an intent, for in the words of the statute "reason to believe" is said to be sufficient. The trial court properly so instructed. Considering the source of the information divulged, and the desire of Gorin to obtain it, we think the jury could properly infer that appellants had reason to believe that such information was "to be used to the injury of the United States, or to the advantage of" afforeign nation.

Error in the admission of the testimony of Commander Zacharias is also alleged. Zacharias was District Intelligence Officer, and a superior of Salich. His testimony was to the effect that he had specifically instructed Salich not to divulge any information. The court carefully instructed the jury that whatever Zacharias said was not to be taken as any statement of law, and that they should consider only the law com-

municated to them by the trial court. As so limited we see no error in the admission of the evidence. The proof was pertinent because it had a bearingon Salich's "reason to believe".

It is also asserted that the exclusion of the Ken Magazine article was error. It is said that such article discloses that the information conveyed to Gorin was well known to the public and not confidential matters. While a serious question might arise in a case where the only information divulged was such as could be found in newspapers or periodicals available to the public, such question does not arise in this case, because the article in the periodical does not, and does not purport to relate all information contained in the reports in question. Assuming, without so deciding, that it was error to exclude the article insofar as it had a bearing on the same information contained in some of the reports, the record affirmatively discloses that the error was not prejudicial because the information in the other reports is not contained in the article. See Lynch v. Oregon Lumber Co., 9 Cir., 108 F(2d) 283, 285-286.

We are, of course, conscious of the argument which could be made that the information divulged must not be of any importance or the Naval Intelligence Office would not have made the information available to the public by presenting the reports in evidence. Such procedure was a necessity in order to try the case. Whether it is sound, we think, is a question for the determination of Congress.

#### THE INSTRUCTIONS

The court's instrution as to the "national defense" is challenged, but we find no error therein except as

stated above. It is urged that the instruction left it to the jury to speculate whether the information related to the national defense. As previously stated, we think the question is one of fact, and the decision thereof by the jury gives rise to no more or different speculation than the decision by a jury of any other fact question.

Finally, it is contended that the court erred in failing to give a requested instruction to the effect that if the jury acquitted Gorin's wife of the conspiracy charge, they must also acquit appellants, because if appellants conspired to convey the information to a representative of a foreign government, then there was noproof of anyone receiving the information from the transmitters.16 The judgment and sentence of the court makes it unnecessary to consider this contention. Gorin received a sentence of six years on the third count and six years on the second count, the terms to run concurrently. Salich received a sentence of four years on the third count and four years on the second count, the terms to run concurrently. It is therefore immaterial whether the judgments and sentences on the third count were right or wrong. Brooks v. United States, 267 U.S. 432, 441.

Affirmed.

(Endorsed:) Opinion. Filed Apr. 22, 1940. Paul P. O'Brien, Clerk.

<sup>\*</sup>Appellants rely on: United States v. Katz, 271 U.S. 354; United States v. Dietrich, C.C. Neb., 126 F. 664; United States v. New York, etc. R.R. Co, C.C. N.Y., 146 F. 298.

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CHARLES ELMORE CHOPLEY

IN THE

### Supreme Court of the United States

OCTOBER TERM, 1940

MIKHAIL NICHOLAS GORIN,

Petitioner,

VS.

No. 87

UNITED STATES OF AMERICA.

HAFIS SALICH,

Petitioner,

VS.

No. 88

UNITED STATES OF AMERICA,

BRIEF FOR PETITIONERS
(After issuance of writ of certiorari.)

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#### SUBJECT INDEX

SUBJECT INDEX	
	Page
The Opinion Below	1
Jurisdiction	1
Statement of the Case. The Undisputed Facts. The Statutes Involved.	2
The Undisputed Facts	.6
The Statutes Involved	12
Summary of Argument	15
The Dominant Issue	15
Point I	16
The Espionage Act makes it a crime only to reveal	
information concerning the places and things spe-	
cifically listed in Section 1 of the Act because—	
(a) The history of the Espionage Act proves that	
a broad definition of "national defense" was	
stricken out of the bill and a specific list of	
places and things written into Section 1 for	
the very purpose of preventing the Act from	
being given the broad construction which it	ALC: U
has now received (Argument	24)
has now received (Argument (b) A grammatical construction of Sections 1,	
2 and 4 of the Espionage Act supports the	
contentions of petitioners (Argument	
(c) The construction placed on the Espionage Act	55,
by the lower courts would render ituncon-	
stitutional. The opinion of the Circuit Court	
concedes the doubtful constitutionality of its	
construction of the Act(Argument	199
(d) Under strict construction of the Espionage	30,
Act, which is the necessary construction to	
be given to a penal statute and particularly	
to language creating a crime, the petitioners	
worn convicted of A "crime" not defined by	
were convicted of a "crime" not defined by the Act(Argument	401
Point II(Argument	99
Point III	23
	20
The District Court erred in its instructions to the	TO A
jury and the Circuit Court of Appeals failed to cor-	2 76/5
rect such errors, particularly in: (a) instructions	
construing the provisions of the Espionage Act and	
leaving it to the jury to define an offense and fix	
the standard of guilt; and (b) failure to instruct the	
jury to acquit Gorin and Salich on the conspiracy	3
count of the indictment after the jury had found the	
defendant, Natasha Gorin, not guilty on that count.	13.83
As to (a), the Circuit Court of Appeals held that	
whether information related to the national de-	TO STATE OF THE PARTY OF
fense or not, was a question of fact to be decided	3

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1	by the jury. This is a construction of law we submit would make this provision of	the Es-
	pionage Ast unconstitutional(Ar	gument 55)
	As to (b) the Circuit Court of Appeals in that the court might have erred, but si	nce the
	sentences or all three counts of the indi	
	ran concurrently, it was immaterial whet	her the
	conviction of present petitioners on the count was right or wrong(Ar	e third
Arour	ment	
. Poi	nt I	24
(	(a)	24
(	(b)	83
(	(c)	38
1	(d) int II	20
Poi	int III	
(	(a)	55
(	(b)	55
Concli	usion	62
74.19		•••
Apper	ndix A tailed Statement of the Case.	63
Anner	ndix B	75
Det	tailed Analysis of Reports.	٠,
	TABLE OF CASES CITED	
Dan #		46 49
Carte	ith v. People of Virgin Islands, 26 F. (2d) 64 erfv. Liquid Carbonic Pacific Corporation, 97 F	(2d) 1 38
Chur	ch of the Holy Trinity v. U. S., 143 U. S. 45	
Ed	996	37
Collin	ns v. Commonwealth of Kentucky, 234 U.S.	634, 53
Conn	Ed. 1510 ally v. General Constr. Co., 269 U. S. 385, 70	L. Ed.
322	2. 46 S. Ct. 126	43, 44
Corpu	us Juris (19 C. J. 1255) ra v. Medical Supers, 25 App. D .C. 433	237
Czari	ra v. Medical Supers, 25 App. D.C. 433	43
111	National Bank v. U. S., 206 Fed. 374, 46 L. R.	M
Gene	ral Construction Company v. Connally, 3 F. (2	d) 666 43, 44
Golds	smith v. U. S., 42 F. (2d) 188	#4 000
Good	ral Construction Company v. Connally, 3 F. (2 smith v. U. S., 42 F. (2d) 133	Hu. 282
Goria	n v 77 S. 191 G. (2d) 712 8.9.	10, 11, 18, 52
Grah	n v. U. S., 111 F. (2d) 712 8, 9, 10 m v. Goodall 282 U. S. 408, 75 L. Ed. 415	24, 38
Hall.	ex parte, 1 Pick. (Mass.) 261	38
Ham	ulton v. Rathbone, 175 U.S. 414	48
Hern	ndon v. Lowry, 301 U. S. 242, 81 L. Ed. 1066	48
Hoda	gson v. Mountain and Gulf Oil Co., 297 Fed. 2	69 38

International Harvester Company of America v. Common-
wealth of Kentucky, 284 U.S. 21644, 48
Lanzetta v. New Jersey, 306 U. S. 451 22, 42 Legal Tender Cases, 79 U. S. (12 Wall.) 457 11
Don't Trong of the Paris of the
Okalahoma Operating Co. v. Love, 251 U. S. 331, 64 L. Ed. 59649
Pampanga Sugar Mills v. Trinidad, 279 U. S. 211, 73 L. Ed. 665
Penn Mutual Life Ins. Co. v. Lederer, 252 U. S. 523, 64 L. Ed. 69924
Penn. R. Co. v. International Coal Mining Company, 230 U. S. 184 48
Prussian v. U. S., 282 U. S. 675, 75 L. Ed. 610 24
R. R. Com. v. Chicago B. & G. R. R. Co., 257 U. S. 563 48
State v. Fero Bottling Works Company, 124 N. W. 387, 26
L.R. A. N. S. 872 50
Stromberg v. California, 283 U. S. 359, 75 L. Ed. 1117, 51
C (4 500 70 A T D 1494
Sutherland v. Commonwealth of Virginia, 65 S. E. 15, 28
L.R.A. N. S. 172 51
L. R. A. N. S. 172 U. S. v. Brewer, 139 U. S. 278, 85 L. Ed. 190 48
U.S. v. Cohen Grocery Co., 255 U.S. 8122, 39-42
(Ibid, 254 Fed, 218) 41
U. S. v. Dennett, 39 F. (2d) 564 56
U. S. v. Katz, 271 U. S. 854, 70 L. Ed. 98624, 38
U. S. v. Pennsylvania R. R. Co., 242 U. S. 208, 61 L. Ed. 251 49
8. S. v. Reese, 92 U. S. 214, 28 L. Ed. 563 43, 45
U. S. v. Sharp, et al, Fed. Cas. No. 16264 46
U.S. v. Shreveport Grain & Elevator Co., 46 F. (2d) 354.
(Ibid. 287 U. S. 77, 77 L. Ed. 175) 47, 48
U. S. v. Wiltberger, 5 Wheat. 85 45
Van Camp & Son, George v. American Can Company, 278 U. S. 245, 60 A. L. R. 106048
STATUTES CITED . Page
Espionage Act, Sections 1, 2, 4 (50 U. S. C. Sections 31,
32, 34)2-5, 12, 16, 24, 35, 86, etc.
Espionage Act, Section 6 (50 U.S.C., Sec. 36) 20, 31, 32, 33, etc.
Amendment to Espionage Act. (Jan. 12, 1938) 33
Amendment to Espionage Act (Act of March 28, 1940) 12
Fifth and Sixth Amendments to Constitution39, 57
Judicial Code, Section 240 (a) (28 U. S. C. 347) 1
REPORTS' CITED
Conference Report H. R. 65; 65th Congress, 1st Session 19, 27 Committee Report No. 30; 65th Congress, 1st Session 25
Committee Report No. 69; 65th Congress, 1st Session 28, 30
Committee Report No. 108; 75th Congress, 1st Session 33

1,

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#### IN THE

### Supreme Court of the United States OCTOBER TERM, 1940

MIKHAIL NICHOLAS GORIN.

Petitioner,

VR.

No. 87

United States of America,

HAFIS SALICH,

Petitioner,

VŞ,

No. 88

UNITED STATES OF AMERICA,

#### BRIEF FOR PETITIONERS

#### THE OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 710) was filed April 22, 1940. It is reported in 111 F. 2d 712; and is printed as Appendix B of the petition for a writ of certiorari.

#### JURISDICTION

The jurisdiction of this Court was invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. 347); and the petition for a writ of certiorari was granted on June 3, 1940.

#### STATEMENT OF THE CASE

The petitioners were convicted in the U.S. District Court, Southern District of California, Central Division, on three counts of an indictment charging violations of Sections 1, 2 and 4 of the Act of June 15, 1917 (50 U.S.C., Sections 31, 32, 34) which will be hereinafter referred to as the Espionage Act.

The first count of the indictment, based on Section 1 of the Act, alleged that the defendants obtained certain "writings and notes of matters connected with the national defense", to wit, confidential information and reports concerning persons under investigation by the United States Naval Intelligence.

Section 1 of Espionage Act. (Section 31, Title 50 U.S.C.).: "Unlawfully obtaining or permitting to be obtained information affecting national defense. (a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, camal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section 36 of this title; or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains,

The second count of the indictment, based an Section 2 of the Act, alleged that this alleged "information relating to the national defense" was transmitted and delivered to defendant Gorin as a citzen and representation of the U. S. S. R.

or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or (c) whoever, for the purpose aforesaid, receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts or induces or aids another to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this title; or (d) whoever, lawfully or unlawfully having possession of, access to, control over, or being intrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note relating to the national defense. wilfully communicates or transmits or attempts to communicate or transmit the same to any person not entitled to receive it, or wilfully retains the same and fails to deliver it on demand to the officer or employee of the United States, entitled to receive it; or (e) whoever, being intrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blue, print, plan, map, model, note, or information, relating to the national defense, through gross negligence permit the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two-years, or both." (June 15, 1917, c. 30. Title I, Sec. 1, 40 Stat. 217.)"

Section 2 of Espionage Act (Section 32, Title 50 U.S. C.):

<sup>&</sup>quot;Unlawfully disclosing information affecting national defense. Whoever, with the intent or reason to believe that it is

The third count of the indictment, based on Section 4 of the Act, alleged a conspiracy to communicate and transmit to Gorin the aforesaid "information relating to the national defense".

to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided. That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) who... ever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years. (June 15. 1917, c. 30, Title I, Sec. 2, 40 Stat. 218.)"

Section 4 of Espionage Act (Section 34, Title 50 U. S. C.):

"Conspiracy to violate preceding sections. If two or more persons conspire to violate the provisions of sections 32 or 33 of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this chapter shall be pun-

There is no substantial dispute about the facts constituting the alleged crimes for which petitioners were convicted, but the cases present the following important questions of law:

1. Did the admittedly wrongful acts of the petitioners in revealing certain information in government files come within the criminal offenses specifically

defined in the Espionage Act?

2. Did these admittedly wrongful acts come within the criminal offenses which the government contends are defined in the *general prohibitions* of the Espionage Act—prohibitions against disclosing information "connected with the national defense" or "relating to the national defense"?

3. Can the statute be constitutionally construed, as it has been in the present cases, to make it a crime to reveal any information regarding anything which a jury might believe to be "connected with" or "relating to the national defense"?

Dependent upon the answers to those major questions are presented the following incidental questions:

-(a) Was the jury properly instructed as to the law?

(b) Should demurrers to the indictment have been custained?

- (c) Should the court have directed a verdict in favor of the defendants?
- (d) Upon the acquittal of Gorin's wife of the conspiracy charged in the third count of the indictment, should not the remaining two petitioner-defendants also have been acquitted on that count?

ished as provided by section 88 of Title 18. (June 15, 1917, c. 30, Title I, Sec. 4, 40 Stat. 219.)"

<sup>&</sup>lt;sup>1</sup> Natasha Gorin, wife of petitioner Gorin was included in the conspiracy indictment but was acquitted on the trial.

#### THE UNDISPUTED FACTS

The statement of facts presented in the opinion of the Circuit Court of Appeals can be accepted as accurate and substantially complete. The following statement is not in conflict with that of the Circuit Court of Appeals but supplements it by calling attention to additional pertinent facts not in dispute.

Gorin is a citizen of the U. S. S. R. who, together with his wife, entered the United States on a passport in 1936 as a representative of Intourist, Moscow, to aid in the tourist business. He was employed by Intourist, Inc., a New York Corporation, which maintains an office at Los Angeles and had charge at that office (R. 145).

Salich was born in Russia; came to the United States in 1923. After naturalization he served on the police force in Berkeley, California from 1930 to 1936 and began employment with the U. S. Naval Intelligence office on August 19, 1936. (R. 331.) He was employed as an investigator in the San Pedro office with the duty of collecting information and working on reports.

Gorin met Salich in 1938 and told him that he was interested in obtaining information about Japanese activities in that area for use in the event of trouble between Japan and Russia, but that Russia was friendly to the United States and he wanted no information that would be considered against the interest of the United States. (R. 169, 178, 336.) Gorin said he was not interested in anything pertaining to the United States. Salich reported the suggestions of Gorin to his superior, Lieutenant Commander Roachefort (R. 337, 340, 135) and testified on the trial that he was instructed to keep

up his contacts with Gorin, exchange harmless information and see what could be obtained in return. (R. 337.)

Salich was in financial difficulties and, as his acquaintance and contacts with Gorin increased, he accepted Gorin's offer of financial assistance, so that over a period from March to December 10, 1938, he received a total of \$1,700 from Gorin (R. 350, 360), which he stated he took as a loan to be repaid as soon as possible; but he did not inform his superiors that he was receiving money from Gorin.

When Salich was interrogated for the first time by the F. B. I. office on December 19, 1938, he talked freely of his relationship with Gorin, revealing all the information he had turned over to Gorin, seeking to excuse the impropriety of his acts by asserting that there was no information in any way prejudicial to the United States. Salich had furnished information which came in part from the files and data of the Office of Naval Intelligence. He did not give Gorin any actual files or reports, but either oral information or typewritten notes. The reports can be classified as follows:

First: Reports concerning movements and activities of certain Japanese persons in this country, including civilians, military and naval officers, diplomatic and consular attaches, and civil or commercial representatives, some of whom were apparently suspected of espionage within the United States.

Second: Reports regarding suspected Japanese activities outside the United States, principally in Mexico and Mexican waters.

Third: Reports concerning certain alleged communists in the United States, whose activities were discussed. There were no reports of any kind which in any way concerned or had any reference to the United States navy or army or any part of the naval or military establishment, or any place connected therewith, or anything whatever relating to the functioning, or means of functioning of the army or navy or any of the proscribed places or things specified in Section 1, of the Espionage Act.

The Opinion of the Circuit Court of Appeals definitely states:

"None of the reports contained any information regarding the army, the navy, any part thereof, their equipment, munitions, supplies of aircraft or anything pertaining thereto." One report named a number of Japanese 'suspected' of being interested in intelligence work. Most of them, on their face, appear innocuous, there being no way to connect them with other material which the Naval Intelligence may have, so that the importance of the reports does not appear." (Gorin v. U. S., 111 F. 2d 712, 716.)

The free and full disclosures by Salich of his relations with Gorin and all that he did, eliminated any substantial issue of fact from the trial and none is presented or involved in this review.

There is, however, a very important issue of law as to the scope and constitutional construction of the Espionage Act. Upon this issue the trial court gave conflicting instructions and the Circuit Court of Appeals has expressly held that the law is in doubt and can only

<sup>•</sup> Italics throughout brief are ours unless otherwise indicated. -

be settled by a ruling of the Supreme Court. The question presented, in brief, is: What are criminal offenses

under the Espionage Act?

There is no question but that the acts of Salich, in revealing information of at least a semi-confidential character in the files of a government office, were wrongful: and the acts of Gorin in inducing such disclosures were wrongful. But since it would not be contended that any government employee could always be convicted under the Espionage Act for improperly disclosing anu of the contents of government files, the question presented by this case is: What disclosures of information

are prohibited by the Espionage Act?

The trial court construed the law in two different ways and gave to the jury conflicting instructions-first instructing the jury that disclosures of information, to come within the prohibitions of the Act, must be information relating to the places and things specifically enumerated in Section 1 of the Act; that is, information concerning vessels, aircraft, naval stations, dock yards, canals, etc. This instruction was in accord with contentions of counsel for the defendants. The Court of Appeals held that such instructions were erroneous, but since they were "favorable to Appellants they are in no position to allege error in that respect". (Gorin v. U. S., 111 F. 2d 712, 719.)

However, the trial court negatived the favorable character of these instructions by leaving the question wholly to the jury to decide as to whether the information obtained in this case "concerned, regarded or was connected with the national defense". This, the court held, was "a question of fact solely for the determination of this jury". (Gorin v. U. S., 111 F. 2d 712, 717, 719.)

The dominant legal issue was presented to the Court of Appeals in the language of counsel for defendants, which was quoted by the court in the following sentences from its opinion:

"It is urged that under such construction, the statute is unconstitutional because it 'would fix no immutable standard of guilt to govern conduct and would give no fixed and definite meaning \* \* \* but would be subject to definition as to meaning by each court and jury'". (Gorin v. U. S., 111 F. 2d 712, 719.)

The Court of Appeals in its opinion reviewed the two lines of cases in the Supreme Court—those holding that broad terms in certain statutes were sufficiently definite to meet constitutional requirements and those holding that the terms used in other statutes were too vague and indefinite. Then the court observed:

"In logic, the statute here involved could be said to be analogous to some of the cases involved in the first group, and to be analogous to some of those involved in the second group. No workable statement of differentiation is apparent from these decisions. Apparently the question has been decided in the above mentioned cases on the basis of appeal of the contention to the court in each individual case rather than by measurement with a definite rule. Because of the doubt as to the controlling group of cases, we assume that the rebuttable presumption of constitutionality has disappeared. However, the result is controlled by the rule that 'It is incumbent " upon those who affirm the

unconstitutionality of an act of Congress to show clearly that it is in violation of the provisions of the Constitution. It is not sufficient for them that they succeed in raising a doubt'. Legal Tender Cases, 79 U. S. (12 Wall.) 457, 531. We hold that appellants have failed to carry the burden of proving unconstitutionality of the statutes involved." (Gorin v. U. S., 111 F. 2d 721.)

Thus it appears that convictions of Petitioners have been upheld by the Circuit Court of Appeals on the somewhat unusual basis that it is doubtful whether the Espionage Act can be constitutionally construed to define; the crime for which they have been convicted. But since the doubt is not a doubt regarding what they did, but a doubt as to whether what they did is a crime, the convictions are upheld upon the assumption that the Supreme Court will resolve the doubt as to whether they should or should not have been convicted by giving an authoritative construction to the Espionage Act. Regardless of the interests of present Petitioners, it is submitted that a reversal of the judgments herein, with a clear and constitutional construction of the Act, is a matter of greatest public concern, particularly in a time such as the present, when it is gravely important that the law regarding espionage should be clearly defined so that, on the one hand, it may not be violated ignorantly, and, on the other hand, there may be assured punishment for those whose activities may be actually harmful to the United States.

A further statement of the case is not necessary for a decision upon the dominant issue: a constitutional construction of the Espionage Act. But to shed further light on the minor issues raised by instructions of the court—and failures to instruct—we present in the Appendix a more detailed statement of the case summarizing the evidence and reviewing the conceded facts. (See Appendix A, page 63.)

#### THE STATUTES INVOLVED

The pertinent sections of the Espionage Act, Sections 31, 2 and 4 of the Act of June 15, 1917 (50 U. S. C. Sections 31, 32, 34) were reproduced in the appendix of the petition for a writ of certiorari and have been again reprinted in this brief in notes on pages 75 to 93.

Attention should also be called to the amendment to this Act, approved March 28, 1940, (U. S. C. Congressional Service, Acts of 76th Congress, Third Session) whereby the penalties for violation of Section 1 were severely increased. While this amendment does not affect the present case directly, it does show a recent construction of the Act by the Congress construing the offenses defined therein as serious and not trivial offenses, requiring clear definition if the constitutionality of the Act is to be sustained.

<sup>1 &</sup>quot;Section 1 of title I of the Act entitled 'An Act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes', approved June 15, 1917, as amended, is amended by striking out 'shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or both', and inserting in lieu thereof the following: 'shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than \$10,000'." (Section 1, Act of March 28, 1940.)

## SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals erred in not holding either that the acts for which petitioners were indicted and convicted were not made criminal offenses in the Espionage Act; or (in the alternative) that those provisions of the Espionage Act were unconstitutional (being in violation of the Fifth and Sixth amendments) which defined a criminal offense so vaguely that it was left to a jury to determine what information was "connected with the national defense" or "relating to the national defense", and thereby to make it a crime to obtain or reveal such information.

2. The Circuit Court of Appeals erred in failing to hold that the District Court erred in overruling demurrers and in denying motions to dismiss and direct a verdict of acquittal at the close of the opening statement of United States attorney. Gorin assignments of error I and II (R. 631). Salich assignments of error I and II (R. 524).

3. The Circuit Court of Appeals erred in failing to hold that the District Court erred (a) in denying motion in arrest of judgment (Gorin assignments of error LX (R. 695)) and (b) in denying a motion for a new trial. Gorin assignment of error LX (R. 695). Salich assignment of error LXXVI (R. 615).

4. The Circuit Court of Appeals erred in failing to hold that the District Court erred in instructing the jury as to the meaning of the term "national defense". Gorin assignments of error XLV, XLVI, XLVIII, L, LI (R. 669 et seq.) Salich assignments of error LXXII, LXXIII, and LXXIV (R. 604 et seq.).

5. The Circuit Court of Appeals erred in failing to hold that the District Court erred in instructing the

jury as to the nature and quality of intent required under the Espionage Act. Gorin assignments of error LXVII (R. 677) LII (R. 686) LV, LVI (R. 689-692).

6. The Circuit Court of Appeals erred in failing to hold that the District Court erred in admitting into evidence the written "reports" from the files of the Naval Intelligence; Gorin assignments of error IX, XLI, inclusive, and XLIII (R. 641 et seq.); Saligh assignments of error XVII to LIX, inclusive (R. 567) et seq.).

7. The Circuit Court of Appeals erred in failing to hold that the District Court erred in denying motions for a directed verdict at the conclusion of the government's case. Gorin assignment of error XLII (R. 666).

## SUMMARY OF ARGUMENT THE DOMINANT ISSUE

It is the contention of petitioners that although it was entirely improper for Salich to furnish and Gorin to obtain information contained in reports in the Naval Intelligence files, these acts were not made offenses under the Espionage statute, because none of the information in the reports related to the "national defense" as that term is used and defined in the statute. The statute specifically prohibits spying upon forts, navy yards, etc., or obtaining prints, maps, codes, etc., and its general prohibition regarding things "connected with" or "relating to" the national defense cannot be construed to make it a crime to obtain or reveal information regarding anything which a jury might believe to be connected with or relating to the national defense. Otherwise, it would be left to a jury to decide in each instance whether it was a crime for a man to obtain or reveal information regarding such subjects as fuel and food supplies and manufacturing capacity and transportation facilities, which are matters commonly the subject of investigation and report, but which, in a broad sense, might be regarded as connected with or related to the national defense. Petitioners contend, and at all stages of the case asserted that the Espionage Act makes it a crime only to obtain or reveal information concerning those places and things specifically described in the Act as connected with or relating to the national defense; and that any other construction of the Act would make it unconstitutional. If the Act ought to be extended to cover the revelation of anything contained in any government reports, the Act should be amended by Congress, but not by judicial construction. This is the

dominant and highly important issue presented in the present case.

### POINT I

The Espionage Act makes it a crime only to reveal information concerning the places and things specifically listed in Section 1 of the Act, because —

(a) The history of the Espionage Act proves that a broad definition of "national defense" was stricken out of the bill and a specific list of places and things written into Section 1 for the very purpose of preventing the Act from being given the broad construction which it has now received.

(b) A grammatical construction of Sections 1, 2 and 4 of the Espionage Act supports the contentions of

petitioners.

(c) The construction placed on the Espionage Act by the lower courts would render it unconstitutional. The opinion of the Circuit Court of Appeals concedes the doubtful constitutionality of its construction of the Act.

(d) Under strict construction of the Espionage Act, which is the necessary construction to be given to a penal statute and particularly to language creating a crime, the petitioners were convicted of a crime not

defined by the Act.

The Espionage Act, under which Gorin and Salich were convicted makes it a crime (Sec. 31. Title 50 U.S.C.) for anyone to obtain information concerning "any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected

with the national defense . . . etc.); or "to copy . . . any sketch, photograph . . . document writing/or note of anything connected with the national defense . . . etc.).

A reading of the entire Section makes it clear that, under the lower court's construction of the Act, it is made a crime for anyone to obtain any information anywhere which a jury may believe is "connected with the national defense" or "relating to the national defense"—if the jury also believes that accused had the "intent or reason to believe that the information to be obtained is to be used to the injury of the United States or to the advantage of any foreign nation."

We submit that the Act cannot be held constitutional unless it is construed so as to make it a crime only to obtain information as to the places and things specifically listed in Sec. 1 as connected with or related to the national defense. Thousands of persons are constantly collecting and reporting information about matters which are more or less closely "connected with or related to the national defense"—such as, appropriations for military purposes; manufacturing capacity for military supplies; productive capacity and reserve supplies of metals and foods essential to national defense; the numbers, equipment and condition of our armed forces; the financial strength and general economic condition of particular industries and of the country as a whole.

It must be evident that, while enormous quantities of such information are being freely collected and published in America, it cannot be lawful and praiseworthy for patriotic organizations, business men, and newspapers to use such information, for example, in criticisms of the government (which many a jury of twelve men might think injurious to the United States, or certainly "to the advantage of any foreign nation")—but at the same time a criminal offense for some foreign agent to obtain and transmit it to his government.

The Opinion of the Circuit Court of Appeals further explains the harmless character of the information dis-

closed in the present case, as follows:

"One of the reports contained information regarding the activities of Japanese fishing boats, and of an acid said to have been deposited in salt water with which it reacted and caused a steel cable and a steel hull of a ship to be corroded through chemical action. This report was dated June 27, 1938. Practically everything which was contained in the report appeared in a printed periodical subsequently. (Ken Magazine, July 27, 1939.) Other issues of the same periodical contained information of the same general nature as that contained in the reports. (Ken Magazine, Vol. 1, No. 1, p. 40, April 7, 1938; Ken Magazine, April 6, 1939.)" (Gorin v. U. S., 111 F. 2d. 712, 716.)

Our government is a *public* operation. Information about all government activities, all information collected by the government and general information about matters of public concern, are open to public consideration *unless* by specific laws certain matters are defined as secret and disclosures are specifically prohibited.

There are obviously many matters connected with or relating to the national defense which should be kept secret. Perhaps all the files in the war and navy departments—all official information in these departments—should be kept secret except for disclosures expressly required or permitted by law.

But the truth is that the Congress has never been willing to enact such laws—even in time of war—because of the belief that public information and discussion of many matters connected with or relating to the national defense are essential to the national defense of a free government.

It is surprising to find no reference to the history of the Espionage Act in the Opinion of the Circuit Court of Appeals. In the brief of Petitioner-Appellant Gorin, extended consideration was given to the history of the Act and it was there shown that although the statute was passed in time of war there was a frequently expressed intention to avoid general terms and broad definitions under which too much power might be lodged with executive officials and too little information available to the public.

Among other things it was shown in that brief (and herein, infra) that a broad definition of the term "national defense" was stricken out of the bill by the Conference Committee and the specific list of places and things now in Sec. 1 was added for the reason explained by the Conference Committee as follows:

"Section 1 sets out the places connected with the national defense to which the prohibitions of the Section apply, while a similar provision of the House bill designates such places in general terms". (Conference Report H. R. 65, 65th Congress, 1st Session.)

Also the Conference report explained significantly the addition of another Section (now Section 6), which provides in part as follows: "The President in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title; Provided, That he shall determine that information with respect thereto would be prejudicial to the national defense."

The Conference Report said about this Section:

"It was adopted because of the changes made in Section 1 and for the further reason that Section 1202 of the House Bill, which gave the words 'national defense' a broad meaning, was stricken out."

The legislative history of the Espionage Act therefore shows that changes in the Act as it passed the House were deliberately made for the very purpose of preventing the Act from being given such a broad construction as it has now received.

As previously pointed out, the trial court partially accepted the construction of the Act now urged on the basis of its history, but then negatived the value of the early instructions to the jury by leaving it wholly to the jury to determine whether the information disclosed in this case "concerned, regarded or was connected with the national defense" and also instructed the jury that it was not essential "that the documents or information alleged to have been taken necessarily injure the United States or benefit any foreign nation". So the defendants were tried and convicted on the theory that the Espionage Act defined it to be a crime (and constitutionally

could define it to be a crime) if any person should obtain any information which a jury might believe to be connected with or relating to the national defense, if the informant or procurer had reason to believe that the information would be "to the advantage of a foreign nation", regardless of whether it was to be used to the injury of the United States.

Yet, the "advantage" of a foreign government must also connote the *disadvantage* of our government. Otherwise why are we concerned to make it a crime to do something *not* harmful to the United States?

There are two vital objections to any such construction of the Espionage Act:

First: The Act need not be so construed and in the

light of its history ought not to be so construed.

Second: If the Act were so construed, it would be unconstitutional because it would be impossible for anyone to obtain or disclose information regarding matters which are well known and publicly discussed throughout the United States, without the risk of being convicted of a felonious crime, if a jury should believe that such information was connected with or related to the national defense and was obtained or disclosed to the advantage of some other nation.

Two quotations from leading cases will make Peti-

tioners' contention quite clear.

"Therefore, because the law is vague, indefinite, and uncertain and because it fixes no immutable standard of guilt, but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform defendant of the nature and cause of the accusation against him, I think it is uncon-

stitutionally invalid, and that the demurrer offered by the defendant ought to be sustained".

United States v. Cohen Grocery Company, 255 U. S. 81.

"No one may be required at peril of life, liberty and property to speculate as to penal statutes. All are entitled to be informed as to what the state commands or forbids. \* \* \* And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning, and differ as to its application, violates the first essential of due process of law".

Lanzetta v. New Jersey, 306 U.S. 451.

### POINT II

The information revealed by petitioners was so "innocuous" (as described by the Circuit Court of Appeals) that the revelation could not be "to the injury of the United States or to the advantage of any foreign nation", as required by the statute; and, since "none of the reports contained any information regarding the army, the navy, any part thereof, their equipment, munitions, supplies, or aircraft or anything pertaining thereto" (again quoting the Circuit Court of Appeals), there should have been a directed verdict of acquittal. A detailed analysis of these reports will fully support this conclusion and such an analysis is presented in the Appendix. (See Appendix B, p. 75.)

#### A POINT III

The District Court erred in its instructions to the jury and the Circuit Court of Appeals failed to correct such errors, particularly in: (a) instructions construing the provisions of the Espionage Act and leaving it to the jury to define an offense and fix the standard of guilt; and (b) failure to instruct the jury to acquit Gorin and Salich on the conspiracy count of the indictment after the jury had found the defendant, Natasha Gorin, not guilty on that count.

As to (a), the Circuit Court of Appeals held that whether information related to the national defense or not, was a question of fact to be decided by the jury. This is a construction of law which we submit would make this provision of the Espionage Act unconstitutional.

As to (b) the Circuit Court of Appeals indicated that the court might have erred, but since the sentences on all three counts of the indictment ran concurrently, it was immaterial whether the conviction of present petitioners on the third count was right or wrong.

### ARGUMENT

#### POINT I

The Espionage Act makes it a crime only to reveal information concerning the places and things specifically listed in Section 1 of the Act because—

(a) The history of the Espionage Act proves that a broad definition of "national defense" was stricken out of the bill and a specific list of places and things written into Section 1 for the very purpose of preventing the Act from being given the broad construction which it has now received.

In case of doubt as to the intention of Congress in employing certain terms and in determining the meaning to be given to words used in a statute, it is permissible to resort to the legislative history of the Act in order to show the intent of Congress in finally arriving at the wording it employs in a certain Act. (59 Corp. Jur. 1017; Penn Mutual Life Ins. Co. v. Lederer, 252 U. S. 523, 64 L. Ed. 699 (1920); Prussian v. U. S., 282 U. S. 675, 75 L. Ed. 610 (1931); U. S. v. Katz, 271 U. S. 354, 70 L. Ed. 986 (1926); Graham v. Goodall, 282 U. S. 408, 75 L. Ed. 415 (1931).)

The present Espionage Act was enacted in 1917. During the first part of that session of the Congress, similar bills were introduced into both the House and the Senate. When the Senate Bill came to the House for approval, the House did not accept the Senate Bill, except the enacting clause, and substituted the contents of its bill for the remaining part of the Act. The Senate refused to approve the change. The bill went to con-

ference. The following discussion is based upon the printed reports of committee hearings, the House committee report, and thereafter the conference reports to the two Houses.

## Action of House of Representatives

The proposed House Bill, introduced April 2, 1917, on the same day President Wilson asked Congress to declare war on Germany, used language in part quite similar to the then espionage statute of 1911. Section 2 of the Act defined a crime premised upon violation of Section 1. The Judiciary Committee considered the bill and changed its whole form and structure.

The Committee Report to the House by Mr. Webb on April 25, 1917, revised the form of the act, and recommended favorably the Bill reading in part as follows:

"Section 1. Whoever, with intent or knowledge, or reason to believe that the information to be obtained is to be used to the injury of the United States, copies, takes, makes, or obtains, or attempts to copy, take, make or obtain, any sketch, photograph, photographic negative, blueprint, plan, model, instrument, appliance, document, writing, code book, or signal book, connected with the national defense, or any copy thereof, or with like intent or knowledge, or reason to believe, directly or indirectly, gets or attempts to get information concerning the national defense, shall, upon conviction thereof be punished by a fine of not more

<sup>65</sup>th Congress, 1st Session, H. R. 291.

<sup>&</sup>lt;sup>2</sup>65th Congress, 1st Session, Report No. 30.

than \$10,000, or by imprisonment for not more than five years, or both.

"Section 1202. The term 'national defense' as used herein shall include any person, or thing in any wise having to do with the preparation for or the consideration or execution of any military or naval plans, expeditions, orders, supplies, or warfare for the advantage, defense or security of the United States of America."

It will be noted that Section 1 of Title 1 of the Committee's redraft did not in any way attempt to particularize the meaning of the words "national defense," but merely contains language now found in subsection (b) (and in part (c)), Section 1. However, Section 1202 of Title 12 of the redraft specifically defined the term "national defense" as to be used in the proposed Act.

In the original H. R. 291, Section 6 read as follows:

"The President of the United States shall have power in time of war or in case of national emergency to designate any place other than those set forth in paragraph (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this chapter on the ground that information with respect thereto would be prejudicial to the national defense; he shall further have the power, on the aforesaid ground, in time of war or in case of national emergency, to designate any matter, thing, or informa-

tion belonging to the Government, or contained in the records or files of any of the executive departments, or of other Government offices, as information relating to the national defense, to which no person unless duly authorized shall be lawfully entitled within the meaning of this chapter."

This section was amended in the course of the proceedings so as to delete the broad powers and extended purposes set forth in the italicized portions. The proposed legislation went to conference and there was presented the Conference Report of the Managers on the part of the House. As reported out on May 29, 1917, it read as follows:

"The President of the United States shall have power in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use of the Army and Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title; provided that he shall determine that the information with respect therto would be prejudicial to the national defense."

It will be noted that, in the original Bill (H. R. 291), the President was given power to designate "any matter, thing or information belonging to the Government or contained in the records or files of any executive department" as information relating to the national defense. This provision was stricken by subsequent amendments to the Bill.

<sup>&</sup>lt;sup>1</sup> 65th Congress, 1st Session, Report No. 65.

### **Conference Reports**

In a subsequent Conference Report, dated June 6, 1917, there was a "Statement by the Managers on the Part of the House," which, in part, read as follows:

"On May 4, 1917, when the House passed this bill and sent it to the Senate, the Senate was already considering a similar bill (S. 2) which had been introduced in the Senate. The Senate continued the consideration of its bill and after perfecting and agreeing to it, took up the House bill and without considering it in its detailed provisions, adopted the Senate bill, as it had been perfected, as an amendment for the House bill by striking out all of the House bill after the enacting clause and substituting the Senate bill, as it had been agreed upon in the Senate. It therefore became the duty of the conferees to weld these two bills into one by adopting the provisions from one or the other with such amendments as seemed necessary to the conferees, within the limits of the conference, to perfect the bill and bring its various provisions into harmony.

"In the main the two bills contained similar provisions, but expressed in different language. The conferees took up the Senate amendment and made it the basis of their final agreement. Some of the sections were agreed to as written, others were amended so as to embody provisions contained in the House bill, or secticus from the House bill were substituted for them, and in a few instances sections were rewritten in conference in order to harmonize the views of the two Houses.

<sup>&</sup>lt;sup>1</sup> 65th Congress, 1st Session, Report No. 69.

"It would be very difficult to point out in minute detail the difference between the bill as it passed the House and that agreed upon in conference, and this would serve no very useful purpose, since they can be easily ascertained by a comparison. The material changes made in the House bill are, however, pointed out below.

### TITLE I.—ESPIONAGE.

"The several provisions under this title in the conferees' report do not materially change the provisions of this title as passed by the House. Section 1 sets out the places connected with the national defense to which the prohibitions of the section apply while the similar provision of the House bill designates such places in general terms.

"Section 2 of the House bill made the person guilty for doing the things enumerated therein "with intent or knowledge, or reason to believe that it is to be used to the injury of the United States." Under section 2 (a) as agreed upon, this provision is made to read, "with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation.

"Section 6 was not in the House bill, but was taken from the Senate amendment: It was adopted because of the changes made in section 1, and for the further reason that section 1202 of the House bill, which gave the words 'national defense' a broad meaning, was stricken out."

This report shows that the Conference Committee

of the two Houses made the following significant changes:

1. The list of places and things now set forth in Section 1 was added to the original House Bill, to read as follows:

"Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used in the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine bac, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section 6 of this title . .

<sup>&</sup>lt;sup>1</sup> Conference Report of June 6, 1917, 65th Congress, 1st Session, No. 69, cited supra.

2. The present Section 6 was added (Section 7 in the first conference report (No. 65), Section 6 in the second conference report (No. 69)), which reads as follows:

"The President in time of war or in case of national emergency may by the proclamation designate any place other than those set forth in subsection A of section one hereof in which anything for the use of the army or navy is being prepared or constructed or stored as a prohibited place for the purpose of this title; provided that he shall determine that information with respect thereto would be prejudicial to the national defense."

3. The third change made was to omit the definition of the term "national defense" (Section 1202). In commenting upon these changes (H. R. 69), the Conference Committee reported as follows:

"The several provisions under this title in the conferees' reports do not materially change the provisions of this title as passed by the House. Section 1 sets out the places connected with the National Defense to which the prohibitions of the House bill designate such places in general terms."

As to the omission of Section 1202 (defining "national defense"), the conferees commented as follows:

"Section 1202 has been stricken out for the reason that the amendments in the several sections of the bill made this section unnecessary."

Upon the addition of the present Section 6 and the omission of the definition of the "national defense" as

in the proposed House Bill, the conferees commented as follows:

'Section 7 (later Section 6, now Section 36) was not in the House Bill but was taken from the Senate amendment. It was adopted because of the changes made in Section 1 and for the further reason that Section 1202 of the House bill which gave the words 'national defense' a broad meaning, was stricken out."

It should also be noted that when the Conference Committee had reported (Report No. 65), and the bill was up for discussion, the following occurred:

"Mr. Webb. Mr. Speaker, the managers of the conference on the part of the House have tried to perform their duty with respect to this difficult bill conscientiously and effectively, and, generally speaking, I may say that the bill presented to you today is practically the bill as it passed the House. The only changes that have been made worth mentioning are in the espionage section proper, and there we agreed as to the particular designation of what matters should not be entered upon or flown over, instead of the 'national defense' as a general description \* \* ."

The Congress, therefore, in enacting the Espionage Act, definitely intended that a limited meaning should be given the words "relating to the national defense," intending to include only those matters and things specifically enumerated and referred to in Section 1.

<sup>&</sup>lt;sup>1</sup> Congressional Record Proceeding of the House, May 31, 1917, p. 3131. Appendix F.

Furthermore, Congress in 1938, enacted statutes specifically prohibiting and regulating the photographing, sketching, etc., of defensive "installations and equipment" whenever in the interest of the national defense, the President shall define them as "requiring protection." The Committee reporting the proposed legislation said, "There is no existing law which will accomplish the results sought by this bill." No necessity would have existed for this enactment if the Congress had agreed with broad definition of "national defense" contended for by the Government in this case.

(b) A grammatical construction of Sections 1, 2 and 4 of the Espionage Act supports the contentions of petitioners.

The words "information respecting the national defense" are first used in Section 1 (a) to fix the "purpose" with which the acts committed must be done in order to constitute a crime. Then, in listing the acts proscribed, the word "information" is used specifically with reference to places or things therein set forth.

Only in subdivision (a) of section 1 and in section 6, which incorporates part of Section 1 by reference, is there any use of the words "information concerning" and "information with respect thereto." And in both

<sup>&</sup>lt;sup>1</sup> Title 50, Sec. 45, et seq., enacted Jan. 12, 1938.

<sup>\*75</sup>th Congress, 1st Session, Report No. 108.

<sup>\*</sup> Section 6 (Title 50 U. S. C., Sec. 36) reads as follows:

<sup>&</sup>quot;Designation of prohibited places by proclamation. The President in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section 31 of this title in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this chapter: Provided, That he shall determine that information with respect thereto would be prejudicial to the national defense." (June 15, 1917, c. 30, Title I, Par. 6, 40, Stat. 219.)

instances the "information" referred to concerns specifically the places and things enumerated and described in detail in the statute. In other words, the subject matter of subdivision (a) of section 1 and of section 6 specifically concerned itself with military objects either therein specifically defined or which, after a determination by the President, proclaimed such that "information with respect thereto" would be prejudicial to the national defense. As stated, these are corporeal, physical, well-defined and commonly known objects and things determined by Congress, or by the proclamation of the President, to be necessary incidents and a part of the national defense of the United States. It/is only "information concerning" or "information with respect" to such specific objects and places that it is put under the ban and prohibition by Congress.

It will be noted that the word "information" is not used in subdivision (b) of section 1, except as a recital. Section 2, as noted hereinafter, is identical as to designation of things included within the statute with subdivision (b), except that in subdivision (b) there is the reference to "anything connected with the national defense," and in section 2 the word "information" is included in addition to the objects and things specifically described.

Therefore, when we come to analyze and try to give proper meaning to the term "information relating to the national defense" as used in section 2 of the statute we must consider and give weight to the fact that Congress nust have used the term "information" with specific reference to its use and fixed meaning as found in subdivision (a) of section 1 and section 6.

There is a canon of construction which requires that where a word is used in a statute in several different places, the first use and designation thereof in the statute which gives the meaning must be taken as the defined meaning for the purpose of the remainder of the statute. And of course the Espionage Act must be read as a whole because section 2 and the other sections specifically refer back to the subject matter of section 1.

Particularly is this argument given support when we examine subdivisions (b) of section 1 under which the first count of the indictment here is drawn. It will be noted that such section refers to specific objects connected with the national defense and at no place (except as a recital) refers to "information" either relating to or connected with the national defense.

Section 1 (b) proscribes and makes a crime of the obtaining of certain fixed and well-defined items and objects, to-wit: any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense." The word "anything" here must be given its meaning as a pronoun. As such pronoun it must refer back to the objects and things specifically described next preceding it; and that is to say, it must refer back to "any sketch, photograph," etc. The planase "or note of anything" as used in subdivision (b) must therefore mean a note of one of the objects or things thereinbefore specifically described in subdivivision (b), or must refer back to the specific place, objects and things enumerated in subdivision (a).

Section 2, as stated above, specifically described the exact items and things enumerated exactly in subdivison (b) of section 1. The only thing that is added is "information" (and "code book" and "signal book"). Therefore, to give the word "information" as there used

any meaning except one which is invalid because of broad and undefined inclusiveness, and to give it the only meaning consistent with an intent on the part of Congress to create a valid statute, the "information" referred to therein must specifically refer back to the well-circumscribed, use of that term as it appears in subdivision (a) of section 1 and in section 6—that is, referring specifically to the places and things described and set forth either by Congress, itself, or by Presidential proclamation made known to the world.

Attention is further called to the very definite and limited meaning given the word "information" and the phrase "information relating to the public defense" occurring in subdivision (b) of Section 2. The part of Section 2 under which the prosecution in this case was had, covers espionage activities concernings nations with whom the United States is at peace. In other words, friendly nations as opposed to enemy nations. Subdivision (b) deals with prosecution in a civil court of espionage "in time of war, with intent that the same (information specifically described in the Act) shall be communicated to the enemy."

# Subdivision (b) reads as follows:

"(b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operation, or with

respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years." (50 U. S. C. section 32).

Certainly this specific section of the statute which has to do with those vital activities of the army and navy when the pation is at war, cannot be said to have more general or inclusive meaning when used in the first subdivisions of Section 2. It will be noted that there is a specific limitation of meaning placed by the statute upon the term "information relating to the public defense" which is made the subject of the wartime statute, namely that it must be such that it "might be useful to the enemy." This indicates again that in subdivisions (a), the meaning of the words "information" and "information relating to the national defense" must be restricted to the specific places and things enumerated in Section 1.

The inclusion of the Espionage Act in the War Code, by congressional action (Table 50 U. S. C. Section 31-42), the use of the term "national defense" in a military sense throughout the act, all show the intent of the Congress to give the terms "connected with national defense" and "relating to national defense" a military connotation and to limit their application to the places and things specifically listed in Section 1. The rule of ejusdem generis should be applied.

19 Corpus Juris 1255; Church of the Holy Trinity v. United States; 143 U.S. 457; 46 L Ed. 226 (1892);

United States v. Katz, 271 U. S. 354, 146 S. Ct.

513, 70 L. Ed. 986 (1926);

Goodall v. Graham, 35 Fed. (2d) 586 (9th C. C. A., 1929), (judgment affirmed 282 U. S. 409, 51 Sup. Ct. 186, 75 L. Ed. 415 (1931));

Carter v. Liquid Carbonic Pacific Corporation, 97 Fed. (2d) 1 (9th C. C. A., 1938);

Ex parte Hall, 1 Pick (Mass.) 261 (1821);

Pampanga Sugar Mills v. Trinidad, 279 U. S. 211, 73 L. Ed. 665 (1929);

Hodgson v. Mountain and Gulf Oil Co., 297 Fed. 269 (D. C. Wyo., 1924);

Goldsmith v. United States, 42 Fed. (2d) 133 (2nd C. C. A., 1930.)

We submit that in attempting to interpret the statute from the point of view of relation of words and grammatical construction and context, one is forced to the conclusion that Congress used the word "information," with due regard for constitutional limitations, and so with particular reference to the matter and things and places specifically described in the statute.

(c) The construction placed on the Espionage Act by the lower courts would render it unconstitutional. The opinion of the Circuit Court of Appeals concedes the doubtful constitutionality of its construction of the Act:

Any construction of Sections 1, 2 and 4 of the Espionage Act, except that giving it a limited meaning restricting the term national defense to an application to the military and naval places and things identified, would render the statutes unconstitutional and void

as in contravention of Amendments V and VI of the United States Constitution. Otherwise the language of the Act would fix no immutable standard of guilt to govern conduct and would give no fixed and definite meaning as required of the language of a criminal statute, but would be subject to definition as to meaning by each court and jury.

Among the leading cases in the United States on this subject which lay down certain general rules which have been universally cited and applied are the decisions of the Supreme Court under the Lever Act found in *United States* v. Cohen Grocery Company and related cases, 255 U. S. 81, 65 L. Ed. 516 (1920). These cases arose under a wartime statute (adopted in 1917) making it unlawful to "make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries." The following language of the District Court was quoted and approved by Chief Justice White:

"Holding that this latter result was not the case as to the particular provisions of the Fifth and Sixth Amendments which it had under consideration, that is, as to the prohibitions which those amendments imposed upon Congress against delegating legislative power to courts and juries, against penalizing indefinite acts, and against depriving the citizen of the accusation against him, the court, giving effect to the right to be informed of the nature and cause of the amendments in question, came to consider the grounds of demurrer relating to those subjects. In doing so and referring to an opinion previously expressed by it in charging a jury, the court said:

Congress alone has power to define crimes against the United States. This power cannot be delegated either to the courts or to the juries of this

country . .

"Therefore, because the law is vague, indefinite, and uncertain and because it fixes no immutable standard of guilt, but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform defendant of the nature and cause of the accusation against him, I think it is constitutionally invalid, and that the demurrer offered by the defendant ought to be sustained."

The indictment was therefore quashed.
The Supreme Court said further:

"The sole remaining inquiry, therefore, is the certainty or uncertainty of the text in question, that is, whether the words 'That it is hereby made unlawful for any person wilfully . . . to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries,' constituted a fixing by Congress of an ascertainable standard of guilt and are adequate to inform persons accused of violation thereof of the nature and cause of the accusation against them. That they are not, we are of opinion, so clearly results from their mere statement as to render elaboration on the subject wholly unnecessary. Observe that the section forbids no specific or definite act. It confines the subjectmatter of the investigation which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore,

the widest conceivable inquiry the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against. In fact we see no reason to doubt the soundness of the observation of the court below, in its opinion, to the effect that, to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury. And that this is not a mere abstraction finds abundant demonstration in the cases now before us; since in the briefs in these cases the conflicting results which have arisen from the painstaking attempts of enlightened judges in seeking to carry out the statute in cases brought before them are vividly portrayed."

In the same case certain language used by the lower Court is probably more descriptive of the problem of appellant herein than any other ever written, and therefore is cited in amplification. In 254 Fed. 218, at p. 223, the District Judge said:

"No man would engage in business, and no self-respecting man would remain in business, if his fortune, good name, or liberty is to be determined solely by the heated and prejudiced views of what is unjust and unreasonable, which may be entertained by a jury personally embarrassed and harassed, it may be, by the inordinate rise in prices of all commodities. Such a law may be fit for the trial of the guilty; but laws ought to be fit both to try the guilty and the innocent. A law which is fit only to try those who are guilty necessarily begs

the question of guilt, and is therefore no better

than lynch law.

"The definitions, boundaries, and limits of a criminal statute ought, at least, to be so clear that no man in his right mind can be in doubt when he is violating and when he is not violating such statute. There ought not to be necessary any chopping of logic or intricate reasoning from cause to effect in order to decide the question of criminality."

"Neither is justification for the indefiniteness and uncertainty which inhere in the statute under discussion to be found in any alleged necessity to mitigate a present and crying evil, which all right thinking men must deprecate and abhor; for it would seem that it might simply have been declared that a sale of any necessary for a stated percentage increase in price beyond cost and carriage should be a punishable crime. At least, such a law would not be objectionable on the ground here urged. That it would have been arbitrary may be conceded. But the statute here is just as arbitrary and to its arbitrariness is added an indefiniteness, vagueness, and uncertainty which is dangerous, beyond excusing, to the property and liberty of innocent men."

The most recent case where the United States Supreme Court has given consideration to the rule of certainty required in criminal statutes, is that of Lanzetta v. New Jersey, 306 U. S. 451, 83 L. Ed. Ad. Op. 590 (decided March, 1939). This was an appeal by defendants from a judgment of the Court of Errors and Appeals of the State of New Jersey affirming a judgment of the Supreme Court which affirmed convictions in the Court of Quarter Sessions of Cape May

County of violating a state statute making it a crime for a person not engaged in any lawful occupation, who has been previously convicted of crime or disorderly conduct, to be a known member of any gang. In reversing, the Supreme Court said:

"If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. Cf. United States v. Reese. 92 U. S. 214, 23 L. ed. 563, 565; Czarra v. Medical Supers, 25 App. D. C. 443, 453. It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. See Stromberg v. California, 283 U. S. 359, 368. 75 L. ed. 1117, 1122, 51 S. Ct. 532, 73 A. L. R. 1484; Lovell v. Griffin, 303 U. S. 444, 82 L. ed. 949, 58 S. Ct. 666. No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. The applicable rule is stated in Connally v. General Constr. Co., 269 U.S. 385, 391, 70 L. ed. 322, 328, 46 S. Ct. 126: 'That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. violates the first essential of due process of law."

In the case of General Construction Company v. Connally, 3 Fed. (2d) 666, where the Court construed an Oklahoma statute for the payment on state work of wages of "not less than the current rate of per diem wages in locality where the work is performed," the law was held unconstitutional. The following language is pertinent:

"There is a clear distinction between an indefinite civil statute and an indefinite criminal statute. This distinction has been recognized by the Supreme Court of the United States. In Edgar A. Levy Leasing Company v. Siegel, 258 U. S. 242, an indefinite state statute was upheld it being civil; while International Harvester Company of America v. Commonwealth of Kentucky, 234 U. S. 216, a penal or criminal statute of Kentucky was held unconstitutional because of its indefiniteness. The basis for this distinction is evident...

"The authorities support the rule that a statute creating an offense must use language which will convey to the average mind information as to the act or fact which it is intended to make criminal."

When this well-considered case was reviewed on appeal, Mr. Justice Sutherland said (269 U. S. 383, 70 L. Ed. 322 (1926)):

"We are of the opinion that this provision presents a double uncertainty, fatal to its validity as a criminal statute... To construe the phrase 'current rate of wages' as meaning either the lowest rate or the highest rate or any intermediate rate, or, if it were possible to determine the various

factors to be considered, an average of all rates, would be as likely to defeat the purpose of the legislature as to promote it....

"In the second place additional obscurity is imparted to the statute by the use of the qualifying word 'locality.' Who can say with any degree of accuracy, what areas constitute the locality where a given piece of work is being done?"

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563 (1876), involving the question of suffrage under the Fifteenth Amendment in a state election in 1870, is probably the case most often cited:

"This is a penal statute, and must be construed strictly, not so strictly indeed, as to defeat the intention of Congress, but the words employed must be understood in the sense they were obviously used. The United States v. Wiltberger, 5 Wheat. 85... Laws which prohibit the doing of things and provide a punishment for their violation should have no double meaning. A citizen should not unnecessarily be placed where, by an honest error in the construction of a penal statute he may be subjected to a prosecution for a false oath; and an inspector of elections should not be put in jeopardy because he, with equal honesty-entertains an opposite opinion . . . If the legislature undertakes to define by statute a new offense, and provide for its punishment, it should express its will in language that need not deceive the common mind. Every man should be able to know with certainty when he is committing a crime."

In another old but well recognized authority, United States v. Sharp, et al., Fed. Cas. No. 16264, in defining what constituted a "revolt" on board a ship, the Court said:

"If we resort to definitions given by philologists, they are so multifarious, and so different, that I cannot avoid feeling a natural repugnance to selecting from this mass of definitions, one, which may fix a crime upon these men, and that too of a capital nature; when, by making a different selection, it would be no crime at all, or certainly not the crime intended by the legislature. Laws which create crimes ought to be so explicit in themselves, or by reference to some other standard, that all men subject to their penalties, may know what acts it is their duty to avoid. For these reasons, the Court will not recommend to the jury, to find the prisoners guilty of making or endeavoring to make a revolt, however strong the evidence may be."

In interpreting the words "real value" in Collins v. Commonwealth of Kentucky, 234 U. S. 634, 53 L. Ed. 1510 (1914), the present Chief Justice of the Supreme Court used these words:

"It was found that the statute in its reference to 'real value' prescribed no standard of conduct that it was possible to know; that it violated the fundamental principles of justice embraced in the conception of due process of law in compelling men on peril of indictment to guess what their goods would have brought under other conditions not ascertainable." In U. S. v. Shreveport Grain & Elevator Co., 46 Fed. (2d) 354, on a charge for selling underweight packages under misbranding of food products, the statute was held unconstitutional as too indefinite. The Court said:

"It must be remembered that this is a criminal action for the alleged violation of this statute, one of the very few that have been brought thereunder ... Hence a much stricter construction is required than if it were merely an act affecting civil rights: I have no doubt that Congress has the power for the protection of the public to require that packages containing articles of food shall have stamped thereon the correct weight, and that the dealer without having any fraudulent or criminal purpose, may in an extensive business be unable to comply exactly in each instance with this requirement. However, in such circumstances it would be a question of intent for the Court and jury, if there was a variation, but the dealer would have a fixed standard by which to be guided, whereas, under the quoted provision of the act, its violation, in large measure, is left either to the discretion of the enforcing department, or to the judgment of the Court and jury in each instance as to what is reasonable. This might vary according to the views of the particular tribunal, and the dealer could never know whether he was violating the law or not until he was brought into court.

"For these reasons, I believe the asserted ground of unconstitutionality under the Sixth Amendment is well founded." (Citing Cohen and Connally cases, supra.) The Shreveport case was reversed in 287 U.S. 77,77 L. Ed. 175 (1932), not for the reason that the Court found that the complained of language was definite, but because they held that the act, in addition, had created powers in certain commissions to alter the arbitrary rule, a consideration that cannot apply in the instant case, as this is general criminal language, applicable to every type and k.ad of act. The Court, however, makes one comment of interest in that case on the subject of the effect of legislative purpose as reported in discovering the meaning of a statute:

"In proper cases such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. But they cannot be resorted to for the purpose of construing the statute contrary to the natural import of its term. R. R. Com. v. Chicago B. & G. R. R. Co., 257 U. S. 563; Penn. R. Co. v. International Coal Mining Co., 230 U. S. 184; George Van Camp & Son v. American Can Co., 278 U. S. 245, 60 A. L. R. 1060. Like other extrinsic aids to construction, their use is 'to solve, but not to create, an ambiguity.' Hamilton v. Rathbone, 175 U. S. 414, etc."

## To the same effect:

Herndon v. Lowery, 301 U. S. 242, 81 L. Ed. 1066 (1937);

U. S. v. Brewer, 139 U. S. 278, 35 L. Ed. 190 (1891);

International Harvester Co. of America V. Ky., 234 U.S. 216, 58 L. Ed. 1284 (1914);

United States v. Pennsylvania R. R. Co., 242 U. S. 208, 61 L. Ed. 251 (1916); Oklahoma Operating Co. v. Love, 251 U. S. 331, 64 L. Ed. 596 (1920).

It clearly appears, therefore, that to construe the statutes in question other than to give them the limited meaning for which appellant contends, would be to render the Espionage Act unconstitutional and void. This construction is wholly untenable.

(d) Under strict construction of the Espionage Act, which is the necessary construction to be given to a penal statute and particularly to language creating a crime, the petitioners were convicted of a crime not defined by the Act.

In the case of Braffith v. People of Virgin Islands, 26 Fed (2d) 646 (1928), in construing a statute relative to right of appeal upon plea of guilty, the Court said:

"When the language of a statute is plain and unambiguous and it conveys a clear and definite meaning, there is not occasion to construe it and no justification for enforcing it otherwise than in accordance with its plain meaning. When, however, a statute is ambiguous in its terms, or because of doubtful language it would seem to have two meanings, courts are called upon to construe it by finding which meaning reflects the intention of the legislature that enacted it. Rules of construction, however, distinguish between civil and penal statutes; the former may be construed liberally; the latter must be construed strictly. The rule has long been settled in similar jurisdictions that all such (penal) statutes must be construed strictly

against the state and favorably to the liberty of the citizen. . . Penal statutes will not be construed to include anything beyond their letter even though within their spirit; nothing can be added to them and nothing can be taken away from them by inference or intendment."

So, also, in the case of State v. Fero Bottling Works Company, 124 N. W. 387, 26 L. R. A. N. S. 872 (N. D. Sup. Ct., 1910), the Court said:

"In our construction of this statute in all its parts we bear in mind that it is a penal statute; that nothing is to be regarded as included within those provisions that are not within its letter as well as within its spirit; and that if it contains patent ambiguity and admits of two reasonable and contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred."

In the case of First National Bank v. United States, 206 Fed. 374, 46 L. R. A. N. S. 1139 (8th C. C. A., 1913), the Court said:

"A person who, or an act which, is not, by the express terms of the law, clearly within the class of persons, or within the class of acts that it denounces, will not sustain a conviction thereunder... An act which is not clearly an offense by the express will of the legislative department before it was done, may not lawfully or justly be made so by construction after it was committed either by the interpolations of expression or by the expunging of some of its words by the judiciary...

It would be dangerous indeed to carry the principle that a case which is within the reason or mischief of a statute is within its provisions so far as to punish a crime not enumerated in the statute because of its equal atrocity or of kindred character with those that are enumerated." (Italics ours.)

In the case of Sutherland v. Commonwealth of Virginia, 65 S. E. 15, 23 L. R. A. N. S. 172 (Va. Sup. Ct. of App. 1909), the defendant was accused of unlawfully carrying about his person a pistol which was concealed from common observation. Evidence showed that the accused had placed his pistol, encased in a scabbard, in a pair of saddle bags which were closed and which he was carrying in his hand at the time of his arrest. The question presented was whether or not it was a violation of the statute against carrying concealed weapons for a man to carry in his hand a pair of saddle bags containing a pistol encased in a scabbard which is hidden from common observation. The Court said:

"No man incurs r, penalty unless the act which subjects him to it is clearly within the spirit and letter of the statute which imposes such penalty. There can be no constructive offense and before a man can be punished his case must be plainly and unmistakably within the statute. If these principles are violated the fate of the accused is determined by the arbitrary discretions of the judges and not by the express authority of the law. If the statute be less comprehensive than the legislature intended, it is for that body to extend its operations and not for the courts."

A strict construction of the terms "connected with" or "relating to the national defense" in this case will limit the application of these terms to the matters, places and things enumerated in Section 1, as to which, admittedly the petitioner-defendants were guilty of no offense.

"None of the reports contained any information regarding the army, the navy, any part thereof, their equipment, munitions, supplies or aircraft or anything pertaining thereto." Opinion of Circuit Court of Appeals in Gorin v. U. S. 111 F. 2d 712, 716.

### POINT II

The information revealed by petitioners was so "innoctious" (as described by the Circuit Court of Appeals) that the revelation could not be "to the injury
of the United States or to the advantage of any foreign
nation" as required by the statute; and since "none of
the reports contained any information regarding the
army, the navy, any part thereof, their equipment,
munitions, supplies, or aircraft or anything pertaining
thereto" (again quoting the Circuit Court of Appeals),
there should have been a directed verdict of acquittal.

detailed analysis of these reports will fully support this conclusion and such an analysis is presented

in Appendix B.

In the trial appropriate objections were made to the introduction of these reports and overruled; demurrers to the indictment were made and overruled; motions to dismiss and for a directed verdict, motions in arrest of judgment and for a new trial, were made and denied, appropriate assignments of error were made in the Circuit Court of Appeals as indicated in the specifications of error made in this court. The errors responsible for the convictions of petitioners have been properly and completely assigned and an adequate record made for their review—as to which there is dispute. The legality of the convictions depends on the construction to be placed on the Espionage Act and upon our contention that the evidence upon which the government relied (evidence that certain reports were obtained by Gorin from Salich) did not prove the commission of a crime punishable under either a natural construction or a constitutional construction of the Espionage Act.

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An examination of the reports will demonstrate their "innocuous" character—as conceded by the Circuit Court of Appeals. It will also demonstrate that they contained no information relating to military establishments, armaments, places or things, the revelation of which was prohibited by the Espionage Act. It will also demonstrate that petitioners had no "intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation"—the intent required (in the language just quoted) by both Sections 1 and 2 of the Act.

The trial court instructed the jury that if petitioners had "reason to believe" that the information would be to the *advantage* of a foreign nation, even though not to the *injury* of the United States, that would constitute the necessary intent (Assignment of Error XLVII; R. 677). The court refused to instruct the jury that

"advantage" to a foreign nation must mean "advantage" against the United States—and not merely advantage against some other foreign nation (Assignment of Error LII; R. 686).

We submit that this statute of the United States cannot be properly construed to make it a crime against the United States to do an act not injurious to the United States or its citizens. The "advantage" of a foreign nation referred to in the Act must clearly connote an advantage over or against the United States. The instructions of the trial court, approved on appeal, defined the necessary criminal intent contrary to the plain meaning of the definition incorporated in the Espionage Act and made the statutory definition meaningless. Obviously, no one would seek information for a foreign government without assuming that the information would be of some advantage or benefit to the foreign nation. But if no injury or disadvantage to the United States were intended (or, as here, resulted) for what reason would the United States seek to inflict a heavy punishment on persons intending and doing no harm to the United States?

We submit that these instructions of the trial court, a misconstruing the statute, were largely responsible for the conviction of the defendants, by depriving them of a defense expressly provided in the statute itself. Thereshould have been a directed verdict of acquittal because of lack of evidence of either intent to disclose, or the disclosure of, information in violation of the Espionage Act. (See Appendix B for a detailed analysis of the reports.)

The District Court erred in its instructions to the jury and the Circuit Court of Appeals failed to correct such errors, particularly in: (a) instructions construing the provisions of the Espionage Act and leaving it to the jury to define an offense and to fix the standard of guilt; and (b) failure to instruct the jury to acquit Gorin and Salich on the conspiracy count of the indictment after the jury had found the defendant, Natasha Gorin, not guilty on that count.

As to (a), the Circuit Court of Appeals held that whether information related to the national defense or not was a question of fact to be decided by the jury, a construction of law which we submit would make this provision of the Espionage Act unconstitutional.

As to (b), the Circuit Court of Appeals indicated that the court might have erred, but since the sentences on all three counts of the indictment ranconcurrently, it was immaterial whether the conviction of present petitioners on the third count was right or wrong.

Although, insisting that the trial court erred in failing to direct a verdict of acquittal on the third count, we confine our argument to the more vital error of the trial court in its instructions which left it to the jury to define the offense of which the petitioners were then found guilty.

First: As a matter of law under a proper interpretation of the Espionage Act none of the reports admitted into evidence constitute information relating to, nor were these notes or documents connected with, the national defense; and the Court should have so instructed the jury.

An apt illustration of the duty of a trial court, and a bolding applicable in this case, is contained in the case of United States v. Dennett, 39 F. (2d) 564 (2 C. C. A. 1930) where there was an appeal from the conviction of the defendant for mailing obscene matter in violation of the criminal code section. (18 U. S. G. 334.) The facts showed defendant had written a pamphlet entitled "The Sex Side of Life" which was designed for the use of parents in teaching the facts of life to their children. The pamphlet had been endorsed by physicians, medical groups and educational authorities. The Circuit Court of Appeals reversed on the grounds that as a matter of law the pamphlet could not come within the ban of the statute. In discussing whether or not this pamphlet came within the prohibitions of the act, the court said:

"But the important consideration in this case is not the correctness of the rulings of the Trial Judge as to the admission of evidence, but the meaning and scope of those words in the statute which prohibited the mailing of an 'obscene, lewd or lascivious . . . pamphlet'. It was for the trial court to determine whether the pamphlet could reasonably be thought to be of such a character before submitting any question of the violation of the statute to the jury (citing cases) and the test most frequently laid down seems to have been whether it would tend to deprave the morals of those into whose hands the publication might fall by suggesting lewd thoughts and exciting sensual desires."

Second: The form of instruction left to the speculation of the jury whether or not the reports related to the national defense, giving a construction of the statute so broad as to render it indefinite and uncertain and therefore invalid under the Amendments V and VI of the Federal Constitution.

The point is fully developed heretofore that a statute must be given a construction which is certain, and if given a construction which refiders it uncertain and leaves its meaning to the speculation of a jury, such construction renders it void and unconstitutional. No other conclusion can be drawn but that the jury in considering any given report was required to speculate and conjecture as to how it could possibly be related to the national defense. For instance (selecting at random Government's exhibit No. 6 g), report No. 534 (R. 277) reads:

"17 June 1938

"534

"Memo for DIO

Subject: Nakamoto, George H. - Column in Refu Shimpo by subject appearing on 15 June 1938. 1. Mr. Nakamoto, the writer of the 'Off the Record' column of the Rafu Shimpo, has been very pro-Japanese and anti-American of late.

H. deB. Claiborne."

Such a report, together with others of a like nature were permitted to go to the jury with an instruction of the Court reading in part as follows:

The right to "due process of law (Fifth Amendment), and the right of an accused "to be informed of the nature and cause of the accusation" (Sixth Amendment), are so obviously involved that no further exposition or citations of constitutional law seem necessary.

"You are instructed that the term 'national defense' includes all matters directly and reasonably connected with the defense of our nation against its enemies (R. 430). . . Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions" (R. 434).

It is evident that the jury was thus guided into a realm of pure speculation. Such reports as the one just quoted—except by some imaginary and conjectural meaning arbitrarily given—cannot possibly be said to have any reference to the places, things or instruments of war or documents relating thereto, even as those terms were broadened and amplified by the coincident instructions of the Court.

Even if the term "national defense" had a well-defined and circumscribed meaning—which it certainly has not—when there is added to it the further broadening phrases "relating to", and "connected with", the result is a most vague and an almost limitless definition. The guilt of a defendant charged with the offense of disclosing information "relating to the national defense" is determined simply by the speculation and conjecture of a particular judge or jury. Such language when unlimited in application is far more vague and uncertain than the language used and condemned in the Lever Act and in other cases heretofore quoted.

Some standard, fixed and definite, must be provided to govern the conduct of both the innocent and guilty in a statute defining a crime. Particularly should this be true in this case when the news of war, invasion and aggression are before men every day; and when expionage, reports and rumors of espionage and tales, both true and fanciful, are currently presented by newspapers periodicals, radio and motion pictures. No such conjectural meaning should have been read into the statute. It should have been given the fixed and certain meaning contended for by petitioners and presented by their requested instructions.

The term "national defense" is descriptive of the most expansive concept, particularly in these days of "total wars" and "total defense". There is hardly a phase of business, commerce, or the life of our people as a whole, which is not impressed with some relation to national defense. The language of the day, in the press, over the radio and in private conversation is charged with reference to this all important problem. Legislation and state papers use the term—all with the largest and most inclusive meaning which truly encompasses the widest concept of our individual and collective life and activities.

Third: If the instructions had been construed as partially adopting the meaning of the Act urged y-petitioners below (namely, a limited use of the term "national defense" restricted to those places and things specifically described in the statute) then the reports should have been held not to relate thereto, and under the law so given, there was no evidence before the jury upon which to convict.

The Court in its charge may be said by the Government to have accepted such an interpretation as contended for by petitioners; and in part of the instructions

seems to have ruled definitely that the list of things and places in the act is controlling. In defining the term "relating to the National defense", the Court defined the first line of defense as well as the second line of defense and stated that the statute names the "places and things" connected with or which comprise both the first and secondary lines of defense and specifically charged that "all of which are specifically designated in the statute" (R. 341).

The Court further charged that "for purposes of prosecution under these statutes, the information, documents, plans, maps, etc., connected with these places or things must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation" (R. 433). The charge refers to other matters of defense, in each case connecting the same with the phrase "said places or things." Notwithstanding the language thus used, the District Judge in further continuing his definition generalizes beyond all exact or definite meaning. He winds up his definition by stating that "you are then to remember that the information, documents or notes which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability of any of the above places, instrumentalities or things for the defense of the United State of America. The connection must not be a strained one or an arbitrary one. The relationship must be reasonable and direct."

The Court concluded by stating that, whether the information was connected with the national defense "is

a question of fact solely for the determination of this jury, under these instructions." In other words, unless the charge were construed to limit national defense strictly to the things and places defined in the statute and referred to by the Court, then the Court permitted the jury to reach its own conclusions as to what might be included in the phrase "national defense". On the other hand, if the instructions were intended to permit the jury to include within national defense only the places and things referred to in Section 1, and the charge of the Court was intended thus to limit the jury, then the Court's charge should have unequivocally supported the contention of the defendants that only those things can be included within the scope of the phrase "relating to the national defense" as relate to or concern the list of twenty-five things or places defined and identified in Section 1. But such a charge clearly made would have been practically equivalent to a directed verdict of acquittal. This was obviously not the effect of the charge.

It should be evident that the total effect of the instructions was to leave the jury without any clear understanding of the law; but to leave the jury also finally impressed with the idea that the entire question of what constituted an offense, as well as whether defendants were guilty of committing ft, was a question of fact to be determined by the jury. This conclusion becomes inevitable when it is realized that if the law had been properly construed by the trial court it would have either directed an acquittal or, on a motion for a new trial, would have set aside verdicts which, on the undis-

puted evidence, could not be sustained.

## Conclusion

We submit that, under a constitutional construction of the Espionage Act, consistent with the maintenance of due process of law, the petitioners were convicted of offenses not defined in that Act, or elsewhere in the statutes of the United States; and that the judgments against them should be reversed.

Respectfully submitted:

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## APPENDIX A

# DETAILED STATEMENT OF THE CASE

The indictment is in three counts. Each charged an alleged offense of violation of certain provisions of the "Espionage Act" appearing in the "War" code. (50 U.S. Code 31, 32 and 34, Sections 1, 2, and 4 of the Act of June 15, 1317.) Petitioners were convicted on all counts.

The first count of the indictment charged violation of Section 1 of the Espionage Act. It alleged that on or about September 15th, 1937, at Los Angeles, for the purpose of obtaining information respecting the national defense with intent and reason to believe that it was to be used to the injury of the U. S. and to the advantage of the U. S. S. R., the defendant obtained

"instruments, documents, writings and notes of matters connected with the national defense, to-wit: confidential information, reports, instruments, documents and writings pertaining to and concerning various and numerous individuals under suspicion, observation, surveillance and investigation, belonging and contained in the United States Naval Intelligence files and reports at San Pedro, California, bearing identification Naval Intelligence Report numbers as follows: 435 . . ." (listing a total of 69 "reports.") (R. 3.)

The second count charged violation of Section 2 of the same Act. It alleged that defendants on or about September 15, 1937, with like intent and reason to believe, transmitted and delivered to the appellant Gorin. as a citizen and representative of the U. S. S. R. "various documents, writings, notes instruments and information relating to the national defense, to-wit: The confidential reports of the investigators of said United States Naval Intelligence located in the office of the United States Naval Intelligence at San Pedro, California, and pertaining to and concerning various and numerous individuals who have been and are under suspicion, observation, surveillance and investigation by said Naval Intelligence Report Numbers as follows: 435..." (listing the same numbered "reports". (R. 4.).

The third count is based on Section 4 of the Act, which makes it an offense to conspire to violate Section 2. It charged a conspiracy, with certain overt acts alleged, to communicate and transmit to Gorin as a reppresentative and citizen of the U. S. S. R.

"documents, writings, plans, notes instruments and information relating to the national defense, to wit: confidential reports, instruments, documents and writings contained in the files of the United States Naval Intelligence at San Pedro, California." (R. 6.)

Petitioners severally demurred upon the grounds that the indictment failed to state facts sufficient to constitute a public offense, or an offense under the Espionage Act, and that it was vague and uncertain and failed to identify or define the term "national defense" as used in the indictment, and was therefore insufficient and in violation of Amendments V and VI of the Constitution

of the U. S. (R. 11). The demurrers were overruled (R. 19), and a plea of not guilty entered. (R. 20.) The case was then tried before a jury, commencing February 21, 1939 (R. 68), and concluded with a verdict of guilty against petitioners on all three counts (R. 462). Gorin was sentenced to imprisonment for six years and to pay a fine of \$10,000 (R. 35). Salich was sentenced to imprisonment for four years and to pay a fine of \$10,000 (R. 37).

The Facts: Salich talked freely to Special Agent G. V. Dierst of the FBI. Dierst was a government witness (R. 145) and related at length the story told him by Salich. After this was reduced to note form it was corrected by Salich and introduced in evidence. (Govts. Ex. 4, R. 168.) Also Salich, at the office of the FBI, typed out and signed what he termed "my sincere and honest story as to what transpired during my relation-

ship with Gorin." (Govt. Ex. 7, R. 178.)

Salich took the witness stand (R. 329 et seq.) and testified in substance practically to the same effect as related in these statements. There was some amplification of detail but no essential variance. Other facts in evidence corroborated Salich. Gorin did not testify.

Salich was born in Moscow, Russia. His parents were middle - class business people, who fought with the "white" forces, and who escaped from Russia, emigrating via Japan to the United States in 1923 (R. 329). After naturalization, he joined the police force at Berkeley, California, serving there under Police Chief August Vollmer from July 1, 1930 until August 15, 1936, as a patrolman, secretary to the Chief, and acting sergeant, with an excellent record in the department (R. 330, 382). He made application for employment with the Naval Intelligence about April or May of 1936, and

after appointment, reported for duty August 19, 1936.

(R. 331.)

The Office of Naval Intelligence is a branch of service of the United States Navy. The head is the Director of Naval Intelligence, who acts under the Chief of Naval Operations in Washington, D. C. (R. 307). Work in Southern California is under the direction of the District Intelligence Officer of the Eleventh Naval District, stationed at San Diego, California. Commander Elias M. Zacharias was in charge at the time of the trial of the action (R. 223). There was a branch office at San Pedro, California. Lt. Commander J. J. Rochefort 'was in charge of this office as Assistant Director until June 1, 1938, and was succeeded by Lt. H. di B. Claiborne '(R. 297).

Salich was employed at a salary as an investigator in the San Pedro office. His duties were to collect information or data about individuals under surveillance of the District Intelligence Officer of the Navy, and other information which might be of possible interest to the office or the commander in charge (R. 334, 224). He also was a stenographer and worked as a clerk in the San Pedro office for about a month (R. 335, 368). He was required to conceal his identity as an investigator for the Naval Intelligence, and carried a police badge as a Los Angeles Police Department officer (R. 366). In order to keep up on the work of the office and matters under investigation, he, and an investigator working with him, would go to the office at San Pedro and go over the copies of reports made by the commander to his su-

<sup>2</sup> The name of "Claiborne" at some places in the record erroneously spelled as "Clayborne".

The name of "Rochefort" appears at some places in the record erroneously spelled as "Roachefort".

perior at San Pedro, kept in the office desk of Chief Yeoman Hanna (R. 112, 335).

The personnel of the San Pedro office, in addition to the officer in charge, consisted of Chief Yeoman Roy Hanna, who was the office stenographer-secretary, and two investigators, Salich and one H. L. Stanley (R. 110). The latter was hired April 1, 1937 (R. 127). Salich and Stanley worked together and used an automobile and an apartment jointly in their work. They covered a specified territory (R. 128).

The method of operation of the office required the investigators to work under the instructions of the Assistant Director. An assignment was made to the investigators and they were required to carry it through in the best manner possible, according to their own judgment. Besides, the investigators were also to be on the lookout for any information which might be of interest to the office (R. 335). Reports were prepared by the investigators in longhand or typewriting and sometimes orally. Sometimes these reports would be written up outside the office and brought in: These investigators' reports were handed to the Assistant Director, who, in turn, evaluated the information they contained and dictated to Chief Yeoman Hanna a report, which sometimes was signed. These reports were then transcribed into typewriting, an original, four yellows and one green would be made. The original and three yellows were forwarded to San Diego. The green and one yellow were retained at San Pedro, the green being placed in the filing system and the yellow "onion skin" was kept in Hanna's desk for access by Salich and Stanley, who would check them when they came into the office. The investigators had keys to the office. The original investigators' reports were destroyed by burning (R. 111, 112, 121, 123).

Gorin is a citizen of the U. S. S. R. and has a passport of that nation. Together with his wife Natasha (or Natalia) and small son, Gorin entered the United States through Ellis Island, January 10, 1936. His passage to the United States was paid by Intourist, Moscow, and he entered this country to act as a representative and director of the tourist business (Gov. Ex. No. 2, R. 214). He was employed by Intourist, Inc., a New York corporation, which maintains an office at Los Angeles and had charge of their office (R. 145).

Salich first met Gorin sometime in July or August, 1937, when he and Stanley called at the office of the Vice Consul of the U. S. S. R. in Los Angeles. They were acting on instructions in an attempt to secure information on a certain Soviet official by the name of Kaganovich. The conversation at that time was social and concerning Kaganovich (R. 333).

The next meeting with Gorin occurred early in January, 1938. A few days before Gorin had called and told Salich's wife he had a letter of introduction from a former Russian Vice Counsel by the name of Aliavdin (R. 336, 338, 178) whom Salich had known in San Francisco while on the Berkeley police force. In fact, he had told Aliavdin and some others prior to his employment by the office of Naval Intelligence of his application for such a position (R. 376, 379).

On the occasion of this first meeting, Salich went to Gorin's house, Aliavdin's letter was delivered (a social letter of introduction) and the two of them then went to a cocktail lounge in the vicinity. Here they conversed in Russian, and Gorin said they were interested in obtaining information about Japanese activities in this area; that they were quite friendly to the United States and wanted no information of any kind that would be considered against the interest of this country (R. 169, 178, 336). Gorin suggested he was prepared to pay some money for the information. Salich replied that he questioned whether any information to which he had access would be of value, and that it would be improper for him to accept money. Gorin explained that there was always a possibility that any information about Japanese international activities might be of assistance in the event of trouble between Japan and the Russians, but that Russia was friendly to the United States and did not want to do anything to jeopardize that relationship.

Salich the very next day discussed this conversation and the suggestions of Gorin with his colleague and co-investigator Stanley. He reported it to his superior Lt. Commander Roachefort, Stanley being present (R. 337, 340, 135). Salich relates that he was instructed to keep up his contacts with Gorin, exchange information with him, giving such as he could get in newspapers and magazines, and see what could be obtained in return (R. 337).

He next saw Gorin a few days later, when they had lunch at Perino's, a restaurant in Los Angeles. Gorin reiterated his desire to get information as to Japanese activities. There was another offer of financial assistance, either directly, or to cover any expenses incident to getting the information. Gorin said they were not interested in anything pertaining to this country. This conversation was reported to Rochefort who said to continue the contact with Gorin and determine his exact

proposition, and to take Stanley along. Stanley and Salich discussed the matter and agreed that if Stanley went along it would spoil the contact (R. 339, 340).

There was a hiatús of about a month and a half when Salich did not see Gorin (R. 342). Then about March of 1938 they met again. Gorin importuned for Japanese information, arguing it was for the mutual benefit of the two countries. Salich related at that time that he was having marital difficulties and was handicapped financially and Gorin again offered financial assistance. Salich accepted the offer, saying he would take it only as a loan to be repaid when he got straightened out. Gorin said this was all right. At this conversation Salich told Gorin of certain information he had obtained regarding a meeting of the Far-East Research Institute where certain anti-American and anti-Semitic utterances were made. About two weeks later Gorin delivered \$200 to Salich (R. 344, 362).

From time to time thereafter Salich met Gorin and furnished him certain information which came in part from the files and data of the Naval Intelligence. At no time did he give Gorin any actual files or reports. He either gave the information orally or in the form of notes made on his own typewriter (R. 351, 161). When apprehended by Mr. Dierst of the F.B.I., Salich went over the files of the Naval Intelligence with him and related in detail just what information he had turned over to Gorin. This appears in the testimony of Mr. Dierst (R. 153 et seq.) and the notes of Salich's statement as corrected by him (Govt. Ex. 4, R. 168).

The reports themselves, information as to which was given by Salich to Gorin or which they discussed together, can be divided generally into several inclusive categories. First: Reports concerning movements and activities of certain Japanese persons in this country, including civilians, military and naval officers, diplomatic and consular attaches, and civil and commercial representatives, some of whom were apparently suspected of espionage within the U.S.

Second: Report regarding Japanese activities outside the U.S., principally in Mexico and Mexican waters.

Third: Reports concerning certain alleged communists in the U.S., whose activities were discussed.

There were no reports of any kind which in any way concerned or had any reference to the U.S. navy or army or any part of the naval or military establishment, or any place connected therewith, or of anything whatever relating to the functioning, or means of functioning, of the army or navy, or any of the proscribed places or things specified in Section 31, Title 50, U.S.C.

The evidence shows conclusively that at no time during the relationship did Gorin even attempt to obtain any information concerning the army or navy of the U. S., or of any place relating thereto. On the contrary, it is clear that at all times Gorin only wanted information relative to Japanese and their activities, and wanted to do nothing to in any way injure the U. S. or which would jeopardize the friendly relationship between the U. S. and U. S. S. R. (R. 169 170, 178, 198, 213, 337, 399, 342, 345, 356, 378). Not only is the testimony of Salich uncontradicted in this respect, but it is corroborated by the type and character of information contained in the reports, and the further fact

that there is no showing of any other information to which Salich had access. He specifically stated that at no time was he ever in a position to obtain any information of a secret nature about the U.S. navy, secret armament, air craft plans, or the like (R. 182).

The record shows that Salich promptly reported his first and certain other contacts with Gorin to his superior, Lt. Commander Rochefort (R. 172, 371). Gorin's "proposition" was discussed, and continued contacts were authorized (R. 370). Stanley, Salich's co-worker in the intelligence work, knew of these because many telephone conversations were had between Salich and Gorin (in the Russian language) while Stanley was present (R. 136, 347). Certain information concerning Kaganovich, Shumovsky and others was obtained by Salich from Gorin, which was reported to his office, concerning certain Russians in the U.S. (R. 333, 341, 347, 355, 377). There were also discussions from time to time relative to certain alleged communists under investigation by the Office of Naval Intelligence. The invariable answer of Gorin was that he had no knowledge of communists in this country, had no connection with them and wanted none (R. 354, 356).

The testimony shows that during the time information was being furnished by Salich, Gorin objected to its insufficiency, claiming there was more information which should be available concerning the Japanese and the real Japanese spies, and that his superiors complained that it was valueless (R. 171, 181, 349, 363). The reports to which Salich had access, and the information he divulged from them were aptly described as "inconsequential."

From time to time following the receipt of the first

money, Salich got various sums from Gorin. Usually it was in \$200 amounts, but the increased pinch of closing a property settlement agreement with his wife occasioned a \$500 amount. All in all, he received \$1700, over a period from March to December 10, 1938 (R. 350, 360). Salich stated that he regarded these amounts as a loan and intended to repay Gorin as soon as his domestic and financial difficulties were strainghtened out (R. 181, 351). He never informed his superiors, Lt. Commander Rochefort or Claiborne that he was receiving money from Gorin (R. 377).

As stated above, Salich was taken to the office of the FBI by Mr. Dierst on December 10, 1938. He talked freely on the subject of his relationship with Gorin (R. 146, et seq.). He stated then, and later to Mr. Hanson, agent in charge of the FBI, that the information he had turned over to Gorin, and whatever he had done in dealing with him, was in no way prejudicial to the U.S., and that it was not in violation of the Espionage Act, with which he seemed to be familiar. In fact, he felt it might definitely be of advantage to the U.S. (R. 147, 170, 180, 181, 182). He explained the irregularity of his action by his firm belief in the fact that he was not in any way injuring the U.S., and the further fact that the pressure of his domestic difficulties made him especially desirous of obtaining money to settle with his wife (R. 170, 182, 343, 359).

Upon the \*rial, there testified certain of the Navy personnel including Roy Hanna, Chief Yeoman, an enlisted man who acted at San Pedro as the office secretary, Commander Elias M. Zacharias, District Intelligence Officer for the Eleventh Naval District, Lt. Commander Claiborne, Assistant Intelligence Officer in

charge of the office at San Pedro, Lieutenant William S. Maxwell, of Russian origin, and H. L. Stanley, investigator employed with Salich as related above. Lt. Commander Rochefort, who had been the superior of Salich during the times of the original and early contacts with Gorin, did not testify.

## APPENDIX B

## DETAILED ANALYSIS OF REPORTS

Shows Clearly That None of Them Concern the Places or Things, or Could be Construed to Come Within the Meaning of the Espionage Act.

There were introduced in evidence by the Government, a total of forty-three "reports", referred to in the indictment, and the basis for the claim that "information relating to the national defense" was obtained and transmitted by the petitioners for purposes in violation of the statute. The whole of the reports are set forth in the record (R. 259-295, inclusive). Appropriate assignments of error were made by both Gorin (R. 641-667) and Salich (R. 567-695). A detailed summary of the reports, listed under their respective categories follows:

First: Reports Concerning Movements and Activities of Japanese Persons in This Country.

These reports included civilians, military and naval officers, diplomatic and consular attaches, and civil or commercial representatives, some of whom were apparently suspected of espionage activities. A review of their subject matter and character follows, considering them sequentially as they appear as exhibits and assignments of error.

Report No. 548 (R. 274), Govts. Ex. 6 (c).

This report refers to a "subject", a Japanese, the fact that he is an agent for some Japanese firm or agency, that he keeps a permanent room at the Olympic Hotel which he rarely uses, that he drives a nice car, is well dressed, reems to always have money and is always on what he calls fishing trips.

Report No. 546 (R. 275), Govts. Ex. 6 (d).

This report deals with an individual Japanese and the fact that he left Los Angeles for San Francisco the morning of June 21st and that San Francisco was informed of his departure. Also that he is scheduled to sail on the Chichibu Maru on June 22nd. Also that "San Francisco was informed" that he had written a large air mail letter to the Clerk of a San Francisco hotel.

Report No. 535 (R. 276), Govts. Ex. 6 (e).

This report apparently is supplementary to a prior one and reports that individual Japanese to whom it refers is manager of a club in Vallejo.

Report No. 534 (R. 277), Govts. Ex. 6 (g).

This report concerns three Japanese named and merely reports that one is expected in Los Angeles on June 19th, the second arrived by plane from Mexico City on June 16th and the third arrived by train from Mexico on June 16th.

Report No. 532 (R. 277), Govts. Ex. 6 (h).

This report concerns the writer of the "Off the Record" column of the Rafu Shimpo (a Los Angeles daily language newspaper): "has been very pro-Japanese and anti-American of late."

Report No. 530 (R. 277), Govts. Ex. 6 (i).

This report refers to two officers of the "Imperial Japanese Army" and the fact that one of them left Los Angeles for San Francisco on the Daylight Limited on June 16th and would catch the Chichibu Maru for Japan. Also that there was no further information on the other officer since a report of an earlier date.

Report No. 529 (R. 278), Gots. Ex. 6 (j).

This report concerns two Japanese representing an oil company of Japan, one being a chemical engineer and the other a mechanical engineer, both arriving in Los Angeles on March 10, 1938.

Report No. 528 (R. 278), Govts. Ex. 6 (k).

This report concerns the activity of a Japanese doctor who had been seen driving an "eggshell blue Cadillac sedan with California License No.," and that fact that he made a trip to Northern California the first part of June and took 300 feet of film of the Bay area and the Coast on the way up. His address is given and the fact that he has an extensive practice among the Japanese on Terminal Island. The fact is also mentioned that the film had been previewed by "this office and contains nothing of military importance."

Report No. 525 (R. 279), Govts. Ex. 6 (1).

This report concerns two officers of the "Imperial Japanese Navy" and the fact that on June 15th they left on an automobile trip to Yosemite via San Francisco. Also that they would be driving a Chevrolet coach with a Washington, D. C. license.

Report No. 519 (R. 280), Govts. Ex. 6 (m).

This report concerns the arrival of a colonel of the Imperial Japanese Army who arrived in Los Angeles June 14th on the Chief. Also the further fact that another Japanese officer did not arrive with him, and that the individual reported on was at the Olympic Hotel, but had made no reservations and was not registered.

Report No. 514 (R. p. 280), Govts. Ex. 6 (n).

This report concerns an individual Japanese who was staying at the Ambassador Hotel and at the residence of the representative of the Japanese steamship line and that he is leaving for New York on the Chief and plans to continue to South America for business contacts.

Report No. 507 (R. 281), Govts. Ex. 6 (o).

This report concerns a number of Japanese "frequently seen in Li'L Tokyo, Los Angeles, both together and separately, spending a great deal of money more than they apparently earn, and are suspected of being interested in intelligence work." There are named or identified twelve persons, together with considerable of the personal occupations and activities of each individual and some groups.

Report No. 505 (R. 284), Govts. Ex. 6 (p).

This report concerns an individual Japanese and the

fact that he is Public Relations Director for a Japanese steamship line, staying at the Ambassador Hotel and leaving the next week for New Orleans via the Grand Canyon. Also that he will continue his trip to other points in the United States in order to prepare the way for two around the world passenger vessels to be completed in 1939. While he was reported to be at the Ambassador Hotel, a check made on him indicated no one by that name was registered there and that a further check would be taken.

Report No. 504 (R. 284), Govts. Ex. 6 (q).

This report concerns two Japanese said to be "lieutenants" of another Japanese in the Tokio Club in Los Angeles and is said to be hiding in Stockton, California and that they had not returned to Japan as the Tokio Club had planned for them to do. Another Japanese was reported as also in hiding with his two friends.

Report No. 503 (R. 285), Govts. Ex. 6 (r).

This report concerns a meeting of the "Far East Research Institute" held on June 9, 1938, at the Olympic Hotel in the rooms of the Los Angeles Chamber of Commerce, where a Japanese author gave a lecture on the "Abacus" to about ten people, and concerning conversations had at the meeting and manner of delivery of the lecturer and lack of interest of the audience.

Report No. 495 (R. 287), Govts. Ex. 6 (s).

This report discusses certain reported group tendencies amongst the Japanese, it being said that the Issei (Japanese born in Japan) and Nisei (American born Japanese) and the Bussei (Japanese of Buddhist faith) are in conflict particularly in the Japanese American Citizens League. Also, certain comment on the control by gambling house known as the Tokio Club and their effort at disciplining patrons found gambling in a Chinese gambling club.

Report No. 489 (R. 288), Govts. Ex. 6 (t).

This report concerns two Lieutenant Commanders of the Imperial Japanese Navy, one of whom will relieve another Japanese here. "Little information is available," it is said, except that one of the subjects "drinks very little, plays golf" and is otherwise engaged.

Report No. 482 (R. 289), Govts. Ex. 6 (u).

This report concerns two Japanese who are said to have requested the General Petroleum Corporation permission to inspect their refineries in Los Angeles.

Report No. 480 (R. 289), Govts. Ex. 6 (v).

This report concerns certain Japanese, including two of those mentioned in the next prior exhibit and reports their return to Los Angeles after inspecting various oil refineries in the East and purchasing certain equipment. Also, they were shown about the oil industry at Los Angeles, made a trip to San Francisco and are to come back to Los Angeles and sail on an oil tanker. Another individual is reported as Pacific Coast manager for a corporation.

Report No. 479 (R. 291), Govts. Ex. 6 (w).

This report concerns the arrival and departure of Japanese officers of the Imperial Japanese Navy.

Report No. 477 (R. 291), Govts. Ex. 6 (x).

This report concerns the arrival of a Japanese officer and that he is stopping at the Olympic Hotel and that he is the "relief" of a Lieutenant Commander of the Imperial Japanese Navy.

Report No. 472 (R. 291), Govts. Ex. 6 (y).

This report concerns a Japanese efficer in the Imperial Japanese Navy that he arrived in Los Angeles May 28th, was staying at the Olympic Hotel and expected to depart for San Francisco.

Report No. 469 (R. 292), Govts. Ex. 6 (z).

This report concerns a Lieutenant Commander in the Imperial Japanese Navy and the fact that he returned to Los Angeles from the East, driving a 1937 Chevrolet coach, with a D. C. license number.

Report No. 466 (R. 292), Govts. Ex. 6 (aa).

This report concerns the same Japanese Lieutenant Commander, the subject of exhibit 6 (z), and is prior dated. It merely states that he is expected to return from the East, driving a new car for some person in Los Angeles.

Report No. 465 (R. 293), Govts. Ex. 6 (bb).

This report concerns Japanese individual said to have arrived in Los Angeles on May 24th and that he left for San Francisco May 25. While here staying at the Miyako Hotel.

Report No. 439 (R. 293), Govts. Ex. 6 (cc).

This report refers to a Japanese woman "who is the girl friend" of a Japanese named in the report, and it is said that she has moved out of the Olympic Hotel into the San Pedro Building across the street. Also that the Japanese is expected back from the East the middle of June.

Report No. 435 (R. 294), Govts. Ex. 6 (dd).

This report concerns a Japanese Engineer-Commander of the Imperial Japanese Navy, and it is said that he arrived on May 14th and departed for San Francisco on May 17th and while here stayed at the Miyako Hotel.

Second: Certain Reports Covered and Were Concerned With Japanese Activities Outside the United States, Principally in Mexico and Mexican Waters.

Report No. 570 (R. 270), Govts. Ex. 6 (a).

This report states that "some data deduced from reliable informants and also from definite indications, it is becoming more and more apparent that Germany, Japan and Mexico are tied up together in espionage activities in this country. It is believed that the various German-American and Japanese-American Chambers of Commerce are serving as centers of this work."

Report No. 560 (R. 271), Govts. Ex. 6 (b).

This report concerns certain Japanese fishing boats. The history and activities of the Japanese fishing boat "Flying Cloud" is given. Particularly is detailed the handling of certain drums of reported acid material, some of which had been docked in the harbor at Hawaii by a Japanese fishing boat, resulting in the plates of a vessel being twenty-five per cent eaten away. Also there is reported the arrest of two Japanese by the California Fish and Game Commission for using acid near Terminal Island to catch fish, the acid having been reported to "eat away a large cable." It is said that "all of these facts have not been checked as yet and an investigation will be conducted." Also that the Flying Cloud is reported to do little fishing, is reported to provision fuel from a Japanese vessel, flies the American flag in American ports, and out to sea flies the Japanese flag, has a radio set capable of reaching Japan, and carries a Japanese expert radio operator. Also there is reported the occasion when two American warships joined the fleet at Long Beach, a Japanese freighter left her berth from Wilmington and took an unnatural course to pass the cruisers close aboard. Also that two large cameras were used to photograph the cruisers, and that three fishing boats left the fish harbor and set out to meet them. Also that the second officer of a Japanese

freighter joined some friends ashore, drove to the edge of Reeves Field and took pictures.

Report No. 536 (R. 275), Govts. Ex. (e).

This report concerns some Japanese individual reported to have been a former consul at San Salvador and promoted to Charge d'Affaires at Panama under a minister at Mexico City. There is reference to "Ken" article on Japanese spies in the first issue. Also that he made statements that a Japanese vessel named "has finished its work off Panama and has shifted to Chile." Owner of the boat mentioned has lumber interests in Chile. Subject wears glasses and his itinerary on a trip is noted. Report also concerns another Japanese from Tokyo interested in mining in California and Nevada who will be in this country for several weeks, and plans to go to Joplin, Missouri, to look into the zinc question, and is suspected of having financial interests in mines in this country.

Third: Reports Which Concern Alleged Communists in the United States.

Report No. 833 (R. 259), Govts. Ex. 5 (a).

This report under the head of activities of Japanese names three American-born Japanese who resigned from the Japanese American Citizens League "because they were accused of indulging in Communist activities." Nething further could be obtained regarding their activities, but a note is made that "this office is of the belief that the informant could discover more con-

cerning this matter but he lacks the energy and the ingenuity to get it."

Report No. 841 (R. 260), Govts. Ex. 5 (b).

This report, under the head of Japanese activities, refers to further information concerning "inter-Japanese strife." It is said that one of the Japanese belonging to a group which was neither Fascist nor Nazi was taken to mean that he was a Communist, whereupon he was beaten up by certain other Japanese and forced to sign papers to that effect, and a "welfare officer" was asked to help clear up the mess and "the report in the newspapers concerning all these people" was said to have been due to an effort to "whitewash" the Japanese.

Report No. 889 (R. 261), Govts. Ex. 5 (c).

This report recites that certain information as having been phoned in by one Shively, who was later contacted. He was said to have been formerly in the Navy, having received a bad conduct discharge. Since then he has been employed in various cities all over the United States and was now a special night watchman. He had contacted an old shipmate who, he said, was a member of the Communist Party. Shively said he located one Simmons and Rayburn in San Diego but had not seen them, and that Simmons works on North Island and was a civil service employee in the aircraft division, and was a Communist, and also belonged to the I-V (S), USNR, San Diego, and operated on Eagle Boat No. 34. Also that Rayburn was reported to "belong to the Communists in San Diego," and was an officer in the Party. The report then states: "Shively is very anxious to have

his bad conduct discharge fixed up, and it is my opinion he is using this means to assist him in the matter."

Reports Introduced and Admitted Only Against Salich

There were certain reports which were offered only against Salich and were admitted only as to him. These were all included in the indictment.

Report No. 1145 (R. 262), Govts. Ex. 5 (d).

This concerns two Japanese individuals registered at the Ambassador Hotel in Los Angeles.

Report No. 1139 (R. 263), Govts. Ex. 5 (e).

This is a report on two Lieutenant Commanders of the Imperial Japanese Navy, listed as a "rumor".

Report No. 1133 (R. 263), Govts. Ex. 5 (f).

This report concerns activities of the "Japanese Association in collecting money for the Japanese War Saving Fund."

Report No. 1132 (R. 264), Govts. Ex. 5 (g).

This report concerns a "chemical professor in a girls' school in Tokyo" who is said to have perfected a fibre helmet about one-fifth the weight of steel, which material can be used for men going through barb wire entanglements. It is also reported that the manufacture of fibre helmets and gloves has already started.

Report No. 1130 (R. 264), Govts. Ex. 5 (h).

This is a report on the individual owner of a printing shop in San Francisco "who has a reputation amongst Japanese of being an active 'Red'." His daughter is said to be in Japan and married to a Japanese naval officer.

Report No. 1129 (R. 265), Govts. Ex. 5 (i).

This is a report on two Japanese individuals who work on a Japanese vessel and make contact with certain other Japanese in the report named.

Report No. 897 (R. 265), Goyts. Ex. 5 (j).

This is a report on two Japanese now on "talking tour" to get donations for the Japanese.

Report No. 1110 (R. 266), Govts. Ex. 5 (k).

This report concerns activities of a Japanese girl apparently in love with a United States sailor. It reports at length her contact and amours with him.

Report No. 1104 (R. 2680), Govts. Ex. 5 (1).

This report concerns a "secret dinner at Shogatsun Tei restaurant in Los Angeles." It is said to have been attended by certain Japanese who were described and identified in part.

Report No. 1081 (R. 269), Govts. Ex. 5 (m).

This report refers to the activities of certain vessels of the "Yamashita Line" and to their anchoring loca-

tions close to the naval anchorages in San Pedro harbor. Also to the fact they are seen taking certain photographs and the activity of certain Japanese in photographing military plans. Also interest of Japenese in purchasing air view of San Pedro area of oil fields and refineries "which unquestionably shows their obtaining every bit of information concerning our defenses and vulnerable spots." It contains the significant comment of the reporting officers, "in view of the facts that there is no law against such indiscriminate photographing of everything, government agencies are handicapped in their effort to assure national security and it is recommended that the prohibited zones bill be placed in effect as soon as possible."

#### **COMMENTS ON REPORTS**

As well stated in the opinion of the Circuit Court of Appeals in this case (R. 715) "none of the reports contained any information regarding the army, the navy, any part thereof, their equipment, munitions, supplies or aircraft or anything pertaining thereto . . . Most of them, on their face appear innocuous, there being no way to connect them with other material which the Naval Intelligence may have, so that the importance of the reports does not appear."

As has been noted, all of the reports consisted of letters or communications by the Assistant District Intelligence Officer at San Diego. The procedure to secure information from which the reports were made, ordinarily was for the investigators (Salich and Stanley) to receive an assignment which they would then execute to the best of their own judgment. Also, they were on the look-out for any information which might come to their

attention which might be of interest to the Naval Intelligence (R. 344, 355). These were the specific instructions of their superior, Lt. Comm. Claiborne (R. 302). During the period covered by the indictment in this case, persons under investigation were principally Japanese. These two investigators usually worked together. They used an automobile and apartment jointly and in part shared the expense which this entailed (R. 128).

The investigators, after making personal contacts and inquiries, consulting hotel records, etc., would then prepare their own form of report to the commanding officer at San Pedro. These reports were usually in long-hand or typewritten. Also oral reports were made. According to Chief Yeoman Hanna (R. 111, 112, 121) these investigators, reports would some times be brought to the office already prepared. The oral information and the investigators reports were considered by the Assistant District Intelligence Officer who evaluated them and then dictated "reports" for forwarding to San Diego.

The regulations under which an officer of the Naval Intelligence operates are in writing and are promulgated by the Chief of Naval Operations. Whatever was done by the officers in charge and investigators pursuant to some written regulation of the Navy Department (R. 256). However, there are certain regulations concerning the office of Naval Intelligence "that are not open to the eyes of the public" or to anyone outside of the Naval Service (R. 258). There is no evidence that Salich even had knowledge of such secret regulations and instructions

However, it is pertinent here to consider certain of these regulations which are made pursuant to statutory authority (34 U. S. C. 591) by the Chief of Naval Operations, which is an office created by and with powers fixed by statute (5 U. S. C. 422, 427). The U. S. Navy regulations as promulgated by the Secretary of the Navy under date of September 17, 1920, and as amended and in force and effect during the period covered by the indictment in this case is a special regulation which directs the manner of classifying "information." It directs the classification into three categories, (1) secret, (2) confidential or (3) restricted. The regulations provide the mechanics for classifying information and rules governing the safeguarding and transmission of such classified matter. The three categories are described in the regulation as follows:

"Secret matter is matter of such a nature that its disclosure might endanger the national security, or cause serious injury to the interests or prestige of the Nation or any Government activity thereof.

"Confidential matter is matter of such a nature that its disclosure, while not endangering the national security, would be prejudicial to the interests or prestige of the Nation or any Government activity thereof.

"Restricted matter is matter of such a nature that its disclosure should be limited for reasons of administrative privacy; or, is matter not classified as confidential because the benefits to be gained by a lower classification outweigh the value of the additional security obtained from the higher classification."

It will be noted that secret matter is such that its disclosure might endanger the national security, or cause serious injury to the nation, while confidential matter "would be prejudicial to the nation," "while not endan-

gering the national security."

The charge in the indictment in this case does not, nor does any of the evidence, indicate the obtaining or transmission, or any attempt so to do, of "secret" matter or information. The indictment only refers to "confidential" reports and information. The evidence is uncontradicted that Salich did not even have access to secret matter or information, that is "matter of such a nature that its disclosure might endanger the national security."

It is important to consider this differentiated classification in the Regulations of the Navy and to view it in the light of the practice of the Office of Naval Intelligence. It will be remembered that five copies of these surveillance reports were made, three of them being forwarded to San Diego, one being filed in the office indexed file and one copy being kept by Yeoman Hanna's desk so that they would be available for inspection and survey by the two investigators Salich and Stanley (R. 112, 385).

It is inconceivable that the responsible commanding officers in charge of the Naval Intelligence work would thus handle any information which they thought or had. reason to believe "might endanger the national security." In other words, such officers, highly skilled, especially trained and responsible did not consider this report information of such a nature that its disclosure would endanger the national security or cause serious

injury to the United States.

Consider also the fact that the investigators in charge of obtaining this information and who had access to it and were required to review it, were not enlisted or

commissioned men under any oath or obligation and subject to court-martial and discipline for breach of duty. (Articles for the Government of Navy, 34 U.S. C., Sec. 1200, Art. 8, Subd. 20th). And in time of war punishable by death (Idem. Art. 4.) They were both salaried employees, privately hired to do certain investigating work of a non-secret nature and to report their investigation.

Consider also the fact that although much was made upon the trial of the secrecy with which the identity and work of Salich and Stanley was to be clothed, Gorin knew of Salich's employment (R. 100, 229, 301). This knowledge was reported to Rochefort, with Gorin's "proposition." Notwithstanding such knowledge on Gorin's part, Commander Rochefort directed continued contact with Gorin, both by Salich and Stanley (R. 116,

135, 340).

No report was made by Rochefort to his superior of Gorin's "proposition" to buy information—although a detailed statement was dictated covering it, of which only an original was transcribed and placed in Salich's "personnel" file at San Pedro (R. 120, 123, 124). This conduct strikes at the whole picture of secret and confidential information vital to "national defense" made on the trial. Here an employee of Intourist, a Russian travel bureau, had offered to buy information contained in the files of the Naval Intelligence from an employee of that service, and such offer was not even reported to the District Intelligence Officer at San Diego. Instead, there were instructions to continue to contact him—only that Stanley should be along.

Thus it will be seen that the responsible directing officers of the Naval Intelligence did not consider the information contained in the surveillance reports or

known to Salich as a part of the "national defense," or "relating to the national defense," or "connected with the national defense," or "respecting national defense" in any sense as provided by the regulations of the Navy. Under such circumstances, how can it be said that a court or jury could properly construe such reports to be within the meaning of the Espionage Act? As a matter of law, on their face, and particularly under the circumstances under which they were compiled and dealt with by the Naval Intelligence as shown by the evidence, they were inadmissible and barred as evidence because patently under any sort of proper construction they could not be said to "relate to the national defense."

No further reference is made to the reports, except to suggest that they should be read, having in mind their manner of compilation, to whom access to them was given and their nature. They were well described as being innocuous, informal communications which have no reference to any of the places and things defined in Section 1 as constituting instruments of the national defense, and do not amount in fact to material disclosures either injurious to the U.S. or advantageous to any other nation. They cannot be held to be "information relating to the national defense" within the meaning of the Espionage Act; and their admission, or that of any one of them, into evidence was error on the part of the trial court. Likewise their consideration by the trial court on the motion to dismiss made after the opening statement of the United States Attorney and when such reports were before the court, should have been granted. The reports cannot be said to be of such a nature as to support and sustain a conviction.

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 $\mathbf{V}_{\scriptscriptstyle \mathcal{Q}}$ 

No. 88 -

UNITED STATES OF AMERICA

#### REPLY BRIEF FOR PETITIONERS

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### SUBJECT INDEX

Pag	ge
The Government's Fi 'Proposition	
(Govt. Brief, pp. 10,36)	2
The Government's Second Proposition	
(Govt. Brief, pp. 16; 36-63)	4
The Government's Third Proposition	
(Govt. Brief, pp. 17; 64-91)	8
The Government's Fourth Proposition	
(Govt. Brief, pp. 19; 91-102)1	1
Summary of Government Position1	5
Conclusion1	7

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#### REPLY BRIEF FOR PETITIONERS

The purpose of this reply brief is to narrow the issues as they have been developed in the previous briefs and to endeavor to focus attention upon those matters which should have decisive weight.

The government endeavors to sustain the convictions of petitioners by a series of alternative propositions which are somewhat contradictory; and each of them has an inherent weakness. It may help to focus attention upon the ultimately decisive issue for us to review, briefly, these propositions.

#### THE GOVERNMENT'S FIRST PROPOSITION

(Govt. Brief, pp. 15; 21-36).

The government argues (A) that petitioners were convicted under their own construction of the Espionage Act, because the trial judge, in defining "national defense", limited its meaning to the places and things enumerated in Section 1 (a) of the Act, and left it to the jury to determine only whether the revealed information was connected with or related to such places and things; and the government argues (B) "that the Naval Intelligence office at San Pedro is plainly included within the places enumerated in Section 1 (a)"; and so the government argues (C) that it was entirely proper to permit the jury to determine whether the revealed information was connected with or related to that "office".

A careful reading of Section 1 of the Espionage Act destroys the foregoing argument. The word "office" is plainly used to define a building or a physical structure; and is not used to define an organization or function of government. Section 1 (a) makes it an offense when anyone "goes upon, enters, flies over or otherwise obtains information concerning any vessel, "factory, mine, telegraph, telephone, wireless, or signal station, building, office or other place "connected with the national defense" or any place wherein any vessel, arms " are being made, prepared or stored " or any prohibited place within the meaning of Section 6". It is abundantly evident that places and physical structures are being described in Section 1

<sup>\*</sup> Italics throughout the brief are ours unless otherwise indicated.

(a); and it is the revelation of information about such a place, and not information about the internal functioning of an "office", which is prohibited.

Section 1 (b) makes it an offense to copy any sketch, photograph, document "or note of anything connected with the national defense", and the subsequent clauses, (c), (d) and (e) use almost exactly the same words as in clause (b) to protect a record of "anything connected with or relating to the national defense". These terms must either describe records concerning the places and things specifically described in Section 1 (a) (except where a self-defining term such as "code-book" is used) or else they have no limitation whatsoever and create the broad offense of revealing any information which a jury may subsequently decide to be information "connected with or related to national defense".

The government's first proposition is, therefore, that the ',ord "office" does not mean a place or a physical: structure (although the Act specifically reads "office or other place connected with the national defense") but means a functional "office", so that revealing any information about the work of such an office is made a crime if a jury decides that it is information relating to the national defense. Now this, plainly, was not the construction of the law insisted upon by petitioners. This is simply another way of stating the construction of the law upon which the government relies, which is, that if anyone, by any means, obtains information which, in the judgment of a jury, relates to the national defense, . he can be found guilty of the crime defined in the Espionage Act. The government's first proposition cannot be sustained unless the Court sustains the government's major proposition, which is, that the definition of the crime of revealing information relating to the national defense can be left to the judgment of a jury as an issue of fact.

#### THE GOVERNMENT'S SECOND PROPOSITION

(Govt. Brief, pp. 16; 36-63)

The government now argues that the Espionage Act clearly makes it an offense to reveal any information connected with the national defense "unrestricted by the particular places and things enumerated in Section 1 (a)". The government argues (A) that "a broad use of national defense is intended in Sections 1 (b) and 2 (a)", and that the "particularization of prohibited" places is appropriate for Section 1 (a), which punishes simply going upon the place and looking about". Thus, < the government rests its case upon the contention that Section 1 (a) can be entirely eliminated from consideration, and that the Act provides for the punishment of anyone who reveals information contained in any "writing or note of anything connected with the national defense" (Section 1 (b)) or who reveals any writing "or information relating to the national defense" (Section 2 (a)).

There are two plain answers to this second and major proposition of the government. First, the legislative history of the Act shows that the Congress explicitly refused to pass any such sweeping law, and that the places and things to be protected by the law were defined by the Congress for the very purpose of preventing the passage of such a vague and sweeping definition of a crime. (Pet. Brief pp. 24-33.) Second, no such sweeping definition of a crime has ever been upheld by this Court as constitutional. Certainly, such an

unconstitutional construction should not be given to the Act when it can be construed to define a crime with constitutional definiteness.

The government argues (B) that "the legislative history is equivocal, but supports our construction at least as much as that of petitioners". We submit that the legislative history is not equivocal; and that it is a pretty serious confecsion of weakness in the government's proposition to urge upon the Court that what was said by members of Congress can be used to obscure what the Congress did, as to which, the record is clear. The Congress, as pointed out in our brief (p. 29), struck out the broad definition of an offense for which the government contends, and included in the final Act the closely defined crime of which petitioners were not guilty.

The government argues (C) that the purpose of the Espionage Act was to protect military and naval secrets, and argues (D) that the effect is "to protect information which, broadly speaking, is secret or confidential, and which is of a military nature...", and that petitioners were guilty of violating the Espionage Act "if the words 'national defense' be given their ordinarily broad meaning". In a word, the government contends that the convictions should be upheld on the basis that it is now a crime, carrying with it punishment by imprisonment "for not more than twenty years"—in time of peace (and death or imprisonment for not more than thirty years, in time of war), for anyone to obtain or reveal any information which a jury may be per-

The government relies on what Senator Overman said in a previous session of Congress in debating a similar bill which was not enacted into law (Govt. Brief, p. 46).

suaded to regard as information "connected with or relating to the national defense". This is the proposition upon which the government really rests its case, and it is this construction of the law which the government contends is constitutional, in its third proposition.

Evidently aware of the weakness of this major,

proposition, the government argues (D) that:

"the statute does not punish the obtaining and disclosure of all information which might be thought to bear on the manifold activities, military and industrial, which comprise the national defense. Instead, the Act contains by its terms or by its plain implications three limitations upon its application: (1) The information must be obtained or revealed with the intent or reason to believe that it will be used to the injury of the United States or to the advantage of a foreign nation. (2) The information must have a military significance. (3) It must be secret or confidential information; either because it is derived from confidential sources or because it presents information outside the public domain which plainly should not be placed at foreign disposal. The first of these limitations is express; the second and third deserve a word of comment. (Govt. Brief, pp. 58, 59.)

The government brief thus tries to write into the Act qualifications upon its alleged breadth, which are not found in the Act, but only in the imagination of government counsel. The government brief states:

"Implicit in these enumerations is a connecting thread of similarity. They refer to matters of military or naval significance. . . . In a broad sense, it protects military information which is secret or confidential."
(Govt. Brief, pp. 59, 60.) This is a most extraordinary way of amending an Act of Congress in order to make it constitutional. This amending process is further explained in footnotes on pages 60 and 61 of the government brief.

According to established rules of construction, the generalized description of information relating to national defense may be made definite by tying it to the previous definition of places and things that are related to the national defense, so that anything of the same character may be regarded as included within the provisions of the law. The familiar maxim of construction, ejusdem generis, can be properly applied.

But the government's argument that revealing any information about national defense which is "confidential or secret in nature" is made a crime (implicitly) by the Espionage Act, is unsound for at least two reasons. First, there is no such limitation in the language of the Act, and, second, Congress could not have intended, and the government in other cases would not want any such limitation written into the Act.

The existence, for example, of a navy yard or a fort or a canal can hardly be regarded as information of a confidential or secret nature. Yet the exact location, structure or equipment of such a place may be kept away from common knowledge if photographs or intimate descriptions cannot be obtained. Without exercising the imagination, it must be apparent that the government would not wish to be met in many other cases with the defense that information obtained or revealed was not secret or confidential. Indeed, since a large number of the reports put in evidence against the de-

fendants in this case presented information which could not possibly be regarded as secret or confidential, then according to the government's present contention, such evidence was inadmissible and the admission of it a proper ground for reversal.

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We submit that the effort in the government brief to amend the Act by writing in the qualification that the proscribed information must be secret or confidential is a significant confession that if the exact language of the Act must be construed as broadly as claimed by the government, then the Act must be held unconstitutional.

#### THE GOVERNMENT'S THIRD PROPOSITION

(Govt. Brief; pp. 17; 64-91)

The government concedes (A) that a statute is unconstitutional "which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess its meaning". But the government finds it difficult to reconcile the decisions of this Court based on this "exemplary precept"—or, let us say, finds it difficult to reconcile these decisions with the government's argument—unless a great many of the foggy, hypertechnical contentions of the government can be sustained.

The government argues (B) that petitioners ought not to be allowed to raise the question, apparently because petitioners should have known that an unconstitutional construction of the statute might be invoked against them. This is an extraordinary reason for denying the right to raise a constitutional question. According to the government, apparently no one is entitled to question the constitutionality of a statute under which

he is convicted unless he has been taken completely by surprise in being charged with an offense!

The government argues (C)—and this, we assume, is its real argument—that the provisions of Sections 1 (b) and 2 (a), standing alone, "are not unconstitutionally indefinite". The government brief candidly admits "the language, it is true, is general; in some cases, generic terms of equal indefiniteness have been held valid, in others invalid". The government argues for validity in the present instance because "national defense is a term of common usage" and is "easily understood by those affected".

Admittedly, national defense is a term of common usage, but in these days, when national defense is commonly referred to as "total defense", it is difficult for anyone to understand what accepted meaning can be given to it short of a meaning covering everything in the way of industrial production and distribution, in the way of moral and patriotic stimulation, in the way of propaganda and efforts to promote national unity and vigor. In a word, "national defense"; as now commonly used, covers at least a considerable part of most of the activities of most of the people of the United States.

Certainly, the government will not contend that if the Espionage Act is to be given a broad meaning, the government wishes it to be confined to the operations of military and naval forces, and does not want its protection extended over the production and transportation of supplies of every description essential to the maintenance of the military and naval forces. Certainly the government does not wish to take the position that under the constitutional power to provide for national defense, an Act cannot be passed prohibiting the revelation of information regarding, or the sabotage of, industrial production which may be an essential part of the national defense.

It is just because the words "national defense" have such a broad meaning that it is essential to have the powers of the government supported by Acts specifically defining those activities which cannot be interfered with, without impairing the national defense. If the government is to rely upon a criminal statute, given the broad meaning which is here sought, then the constitutional protections of American citizens, in their right to have a crime defined so that it can be understood, will be swept away. Then, fear of punishment at the will of the executive will take the place of fear of punishment at the will of the people, expressed in legislation.

The government argues that the language cannot be made more precise without weakening the statute, that any uncertainty as to its meaning does not affect "innocent" activity, and there are strong reasons of policy for enacting the prohibition "in the most effective terms". (Govt. Brief, p. 19.) This is nothing more or less than a plea for executive dictatorship supported by the judiciary, with the liberties of the people dependent upon the ability of lawyers to convince juries that their clients should not be sent to jail because they are essentially "innocent", although indicted for the violation of a statute so broad that the mere allegation of guilt by the government raises a presumption of guilt.

For example, a labor organization or a newspaper publicly revealing information as to deplorable conditions in a factory producing military supplies might only do so at the peril of being held guilty of communicating information (by publication) to a foreign government, while having good reason to believe that it would be "used to the injury of the United States".

#### THE GOVERNMENT'S FOURTH PROPOSITION

(Govt. Brief, pp. 19; 91-102)

The government, having sought to sustain these convictions on the basis of an intolerably broad definition of the offense created by the Espionage Act, makes its final plea on the ground that (A), even if the revealed information was "innocuous", defendants should be bent to jail because of obtaining information intended "to be used to the injury of the United States, or the advantage of a foreign nation". It is a little difficult to see how innocuous information could be harmful, so the real argument of the government is that the defendants had reason to believe that the information might be either injurious to the United States or advantageous to another nation and that, therefore, the fact that what they got was of no value does not relieve them of guilt.

But, the evidence makes it quite clear that the information was sought on the very basis and understanding that it would not be injurious to the United States

to reveal it.

It is uncontradicted that Gorin told Salich that he did not want any information revealing military secrets, or in any way harming the United States; and that Russia was interested, just as the United States was interested, in knowing of the activities of Japanese spies. Salich's admitted report to his superiors of Gorin's proposition shows that he did not have any

<sup>&#</sup>x27;Salich: R. 337, 341; Govt. witness Stanley: R. 135.

reason to believe he was doing anything injurious to the United States, and, since all the information furnished was "innocuous", the evidence supports the reasonableness of his belief and leaves open only one question which could be fairly asked: Why should Gorin seek the information if it would not be, in his opinion, to the advantage of his country, Russia?

This question brings forth another strained construction of the law which the government finds necessary to support the present convictions. First, they cannot be supported except by giving to the law an intolerable breadth, in accordance with which the Court would be expected to hold the statute unconstitutional. Second, even under such a construction, there is no crime unless information is obtained "with the intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation". It is plain in this case that the petitioners did not have the intent or reason to believe that the information was to be used to the injury of the United States. Therefore the convictions can only be supported upon the claim that the parties did have the intent or reason to believe that the information was to be used "to the advantage of a foreign nation".

Here, the government is forced to ignore the word used in the statute, which is "advantage", and to seek to have the statute construed as though it read "to be used for the benefit of any foreign nation". We submit that the word "advantage" was used and correctly used to mean the advantage of a foreign nation which would be to the disadvantage of the United States. The law was passed for the protection of the interests of the United States. The Congress was not interested in pre-

venting a foreign government from obtaining information which might be of some benefit to that government without any detriment to the United States. So the law was written, providing that the information must be intended to be used "to the injury of the United States" and, to make that injury not merely a positive harm but to cover even a negative harm, there was the further provision "or to the advantage of a foreign nation", which means, giving a foreign nation an advantage over the United States in some matter. (Pet. Brief, pp. 52-54.)

It must be emphasized again that the phrises we are discussing are those that describe a guilty knowledge or intent, which is made a necessary element in the crime defined. There must be evidence presented showing either an actual intent, or a reason to believe that the revelation of the information will actually injure the United States or give another nation an advantage over the United States.

It would be hard to imagine a case where the evidence could show more clearly than in the present case, that those convicted had no such guilty intent. Gorin did not seek any information about the military or naval armament or plans or activities of the United States. He said, in effect, to Salich: "As a part of your duties you are obtaining information as to Japanese who may be spying upon the United States. My government is also interested in locating Japanese spies." Salich's superior, according to Salich's uncontradicted testimony (R. 337) told him to keep up his contacts with Gorin, exchange harmless information and see what could be obtained in return.

There is nothing in the case upon which to base the conclusion that either Gorin or Salich had any intent or reason to believe that they were doing anything to the injury of the United States. Indeed, there is so much contrary evidence that the government is forced to rely on the one assumption which can be made, which is, that Gorin was trying to get information that would benefit his government. Then, in order to make that intent coincide with the intent required by the law, the government finds it necessary to write out the normal meaning of the word "advantage" and make it synonymous with the word "benefit", because there was no evidence upon which a jury would be justified in finding that the defendants had reason to believe they were doing anything which would be to the "advantage" of another nation-against the interests of the United States.

We have only stressed the government's fourth proposition in order to point out that the convictions in this case can only be supported by first, giving to the Espionage Act an unconstitutionally broad interpretation, and, second, making the requirement of guilty intent or knowledge practically meaningless whenever the representative of a foreign government is involved. Presumably, no representative of a foreign government, no foreign consul or special agent, would be seeking information in this country except for the benefit of his own country.

But, if it be held that the Act prohibits revealing any information connected with or relating to the national defense, then almost any information which any representative of a foreign government might seek to obtain in this country would be proscribed; and there would be no defense available on the ground of lack of intent to injure the United States, because it would be obvious in every case that the information was sought for the benefit of another nation. Accordingly, if the "benefit" of another nation is to be regarded as synonymous with the "advantage" of another nation, then there will be no difficulty in ascribing a gailty intent to the most innocent investigations in this country by representatives of another friendly nation.

#### SUMMARY OF GOVERNMENT POSITION

The entire argument of the government can be summarized in the following statement in the government brief, page 61:

"The phrase 'information connected with the national defense' as used in the context of the Espion ge Act means, broadly, secret or confidential information which has its primary significance in relation to the possible armed conflicts in which this nation might be engaged."

The government's contention, therefore, is that the Congress could constitutionally enact, and has enacted a law reading, substantially, as follows:

Whoever reveals any information that, in the judgment of a jury is "secret or confidential information which has its primary significance in relation to the possible armed conflicts in which this nation might be engaged" shall be punished by imprisonment for not more than twenty years.

The obvious unconstitutionality of such an act may seem to make the government's quoted statement a

careless exaggeration of the government contention. But when the government brief is carefully read, it will be evident that page after page of the argument is consumed with attempted justifications of exactly such a law.

On page 27, it is argued that a report about "Japanese observation of naval vessels" violates the law. Apparently, the government contends that it would be a crime for a person who saw a foreigner taking pictures of a United States warship to tell someone about it; or perhaps not a crime for an American newspaper reporter, but a crime for a foreign newspaper reporter!

On page 32, the government argues that "knowledge of a foreign nation that we know of their knowledge of the limitations of our instruments of war is related to the operation of those instruments". There is not the slightest evidence of this character in the present case, but this extension of the provisions of the Espionage Act shows the length to which the government is prepared to go in applying its broad construction of the Act to practically anything which government officials may not like.

On page 63, the government argues that the information contained in a few innocuous reports presented a full picture of the work of the Naval Intelligence office at San Pedro so far as it was directed toward protection against Japanese espionage". This statement cannot be true. In fact, Lieutenant Claiborne, on instructions from the Secretary of the Navy, declined to produce all the other reports and files of defendant Salich. But this illustrates how the argument of the government is compounded of an exaggeration of the importance of the revealed information in order to relate it to the national

defense, and then an exaggeration of the scope of the aw in order to bring the wrongdoing of petitioners within the definition of a crime punishable by imprisonment for twenty years in time of peace, and longer, or by death, in time of war.

#### Conclusion

In conclusion, counsel for petitioners, as members of the Bar, venture to submit that the issue in this case is much more important than whether justice has been done to the petitioners, which is, of course, their particular concern. Their conduct was confessedly wrong. Even the extreme severity of punishment would not warrant an impassioned appeal-if they had been convicted of an offense defined as a crime in the federal statutes. But it is of the highest importance to uphold the constitutional safeguards of the administration of justice in the United States. No sympathy or antagonism for individuals should impair the maintenance of those standards. Whether petitioner Gorin goes to jail or is deported; whether petitioner Salich goes to jail or into the ranks of the unemployed, stigmatized as unworthy of confidence, the extent or adequacy of their punishment is not the issue submitted to this high Court.

The issue here submitted is whether that which is made a crime must be clearly defined by law so that anyone offending against the law knows or should know that he is making himself a criminal, or whether a crime can be legally defined in such broad terms that no one can be sure that he is not violating the criminal law when carrying on what are normally regarded as legitimate activities. There are today millions upon millions of

workers engaged in the production, transportation and use of things essential to the national defense—persons who are able to, and may, reveal information regarding these things which may be used to the injury of the United States or to the advantage of a foreign nation. There should be a federal law defining where and when and what information cannot be revealed. Departments of government should be authorized further to define by, regulations and to carry out the purpose of such a law.

The Congress found great difficulty in 1917, in a time of war, to write such a law, and at the same time to preserve the freedom of exchange of information necessary to the maintenance of a democratic government. The Congress may have erred on the side of preserving the liberties of a free people, in attempting to restrict the application of the Espionage Act to a too limited area. But it is certain that the Congress did not enact, and would not enact, a law making it a crime to reveal any information which a jury might subsequently regard as connected with, or related to the national defense. No such law should be written by the concert of administrative and judicial interpretation, expanding the provisions of the present Espionage Act. When such a law is written by the Congress, it can be presumed that offenses from the grade of misdemeanor to capital offense will not be lumped together for the same punishment in one enactment prohibiting the revelation of both trivial and important information "connected with or related to the national defense".

We submit that petitioners have been convicted of an offense not defined as a crime in the law under which

they were convicted, and that the judgments should be reversed.

Respectfully submitted,

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### INDEX

	Page
Opinion below	. 1
Jurisdiction	1
Questions presented	
Statute involved	2
Statement	
Argument	4
Conclusion	7
Appendix	8
CITATIONS	10
Statute:	
Espionage Act of June 15, 1917, c. 30, 40 Stat. 217:	
Sec. 1, Title I (U. S. C., Title 50, Sec. 31)	8
Sec. 2, Title I (U. S. C., Title 50, Sec. 32)	10
Sec. 4, Title I (U. S. C., Title 50, Sec. 34)	

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### In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 1024

MIKHAIL NICHOLAS GORIN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 1025

HAFIS SALICH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

#### BRIEF FOR THE UNITED STATES IN OPPOSITION

#### OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 710-736) is not yet reported.

#### JURISDICTION

The judgments of the Circuit Court of Appeals were entered April 22, 1940 (R. 736, 738). The

petition for writs of certiorari was filed May 21, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

#### QUESTIONS PRESENTED

Whether the Circuit Court of Appeals properly construed Sections 1, 2, and 4 of Title I of the Espionage Act, upon which the indictment was predicated, and whether, so construed, these sections are invalid because they fail to prescribe a sufficiently definite standard of guilt.1

#### STATUTE INVOLVED

Sections 1, 2, and 4 of the Espienage Act of June 15, 1917, are printed in the Appendix, infra, pp. 8-11.

#### STATEMEN'

On January 11, 1939, an indictment in three counts was returned against the petitioners and another 2 in the District Court for the Southern District of California (R. 2-8). The first count charged a violation of clause (b) of Section 1 of the Espionage Act (Appendix, infra, p. 9); the second count a violation of Section 2 (Appendix,

The codefendant (the wife of petitioner Gorin) was

acquitted on all three counts (R. 462).

However, this Court, we submit, is not required to consider these questions for the reason stated in the Argument (infra, pp. 4-7).

infra, pp. 10-11); and the third count a conspiracy to violate Section 2, in violation of Section 4 (Appendix, infra, p. 11). The first count (R. 2-3) alleged that the defendants, for the purpose of obtaining information respecting the national defense, and with intent and reason to believe that the information to be obtained was to be used to the injury of the United States and to the advantage of a foreign nation, did copy, take, make and obtain certain documents, writings and notes connected with the national defense, i. e. confidential information, reports, instruments, documents and writings pertaining to and concerning various and numerous individuals under suspicion, observation, surveillance and investigation, belonging and contained in United States Naval Intelligence files and reports, which were described by number. The second count (R. 4-5) alleged that the defendants communicated, delivered, and transmitted to the defendant Gorin, as a representative of a foreign nation, various documents, writings, notes, instruments and information relating to the national defense, describing the same Naval Intelligence reports as were enumerated in Count 1. The third count (R. 5-8) alleged that the defendants conspired to communicate, deliver, and transmit to a foreign power and to Gorin as its representative, documents, writings, plans, notes, instruments, and information relating to the national defense, i. e., confidential reports, etc.,

contained in the files of the United States Naval Intelligence.

Each of the petitioners was found guilty on all three counts (R. 32, 462). The petitioner Gorin was sentenced to two years' imprisonment and a \$10,000 fine on the first count and to six years' imprisonment on each of the other counts, the terms of imprisonment to run concurrently (R. 35–36). Petitioner Salich was sentenced to two years' imprisonment and a \$10,000 fine on the first count, and to four years' imprisonment on each of the other two counts, the terms of imprisonment to run concurrently (R. 37–38). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the judgments of conviction were unanimously affirmed (R. 710–736, 738):

The petitioners concede that there is no substantial dispute concerning the facts (Pet. 3). The evidence was reviewed at length in the opinion of the Circuit Court of Appeals (R. 711-717), and need not be here repeated.

#### ARGUMENT

As is apparent from the opinion of the Circuit Court of Appeals, the petitioners contended in that court that the words "respecting the national defense" and "connected with the national defense", as used in Section 1 of Title I of the Espionage Act, and the words "relating to the national defense," in Section 2, should be limited in their application to the places and things spe-

cifically enumerated in clause (a) of Section 1 and that, unless so limited, the statute would be unconstitutional for indefiniteness. The Circuit Court of Appeals held that the words "national defense" should not be so limited; that they were used "in a broad sense with a flexible meaning"; and that the statute was not unconstitutional as thus construed (R. 724, et seq.). The petitioners contend in their petition for writs of certiorari that the Circuit Court of Appeals erred in its decision upon these questions and that the questions are of such public importance as to require review by this Court.

While the Government is of the opinion that the questions were correctly decided by the Circuit Court of Appeals, it submits that it is not necessary for this Court in the instant case to pass upon them. The petitioners concede in effect that the Act is constitutional if it is so construed as to make it a crime only when the information obtained or disclosed relates to the places and things specifically enumerated in clause (a) of Section 1 (Pet. 10, 16). They also admit that the trial court, in accordance with the contentions of counsel for the defendants, instructed the jury that the obtaining and disclosure of information, to come within the prohibition of the Act, must be information relating to the places and things expressly enumerated in clause (a) of Section 1.8 (Pet. 7.)

These instructions will be found at R. 430-432.

It is thus apparent that the case was submitted to the jury upon a construction of the statute which was in harmony with the petitioners' view as to how it should be validly construed. There is, consequently, no occasion to determine whether the statute may be given a broader construction, and if so, whether such a construction would make it unconstitutional.

The petitioners assert, however, that the favorable character of these instructions was negatived by instructions leaving to the determination of the jury, as a question of fact, whether the information obtained and disclosed in the instant case "concerned, regarded or was connected with the National defense." (Pet. 7.) This assertion completely misconstrues the purpose and meaning of the latter instructions. The jury was twice expressly told that whether the information in question concerned, regarded or was connected with the national defense was a question of fact solely for determination of the jury "under these instructions" (italics ours) (R. 434, 438), and the jury had previously, as we have indicated, been expressly advised that the term "national defense" as used in the Act was limited to the places and things enumerated in clause (a) of Section 1.

Petitioners stress what they term the innocuous character of the information obtained from the files of the Naval Intelligence (Pet. 14, 16). Whether or not the information obtained and disclosed in fact injured the United States is, under the statute, beside the point. If the information relates to the national defense, its obtaining and disclosure are made offenses when done "with intent or reason to believe that the information " " is to be used to the injury of the United States, or to the advantage of any foreign nation." It is therefore evident that it is of no materiality whether the information obtained and disclosed injures this Government or redounds to the advantage of a foreign power.

#### CONCLUSION

Since the case presents no question which requires review by this Court, it is respectfully submitted that the petition for writs of certiorari should be denied.

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GEORGE F. KNEIP, FRED E. STRINE, W. MARVIN SMITH, Attorneys.

MAY 1940.

In this connection it is significant that the petitioner Gorin as a representative of a foreign nation paid a substantial sum to the petitioner Salich for the information which the latter obtained from the files of the Naval Intelligence (R. 350, 714). Also, it might well be that information which, on its face, appears to be innocuous would, because of other information possessed by a foreign nation, be of vital importance and advantage to that nation.

#### APPENDIX

Section 1 of the Title I of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 217 (U. S. C., Title 50, Sec. 31), provides:

That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section

six of this title; or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or (e) whoever, for the purpose aforesaid, receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts or induces or aids another to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this title; or (d) whoever, lawfully or unlawfully having possession of, access to, control over, or being intrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note relating to the national defense, willfully communicates or transmits or attempts to communicate or transmit the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or (e) whoever, being intrusted with or having lawful possession. or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, or information, relating to the national defense, through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both.

Section 2 of Title I of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 218 (U. S. C., Title 50, Sec. 32), provides:

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or

communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years.

Section 4 of Title I of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 219 (U. S. C., Title 50, Sec. 34), provides:

If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this title shall be punished as provided by section thirty-seven of the Act to codify, revise, and amend the penal laws of the United States approved March fourth, nineteen hundred and nine.

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## INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented.	2
Statutes involved	. 3
A. A. C.	-
1. Proceedings below	3
2 The Naval Intelligence Office	5
2. The Naval Intelligence Office	. 7
4. Information given Gorin	8
5. Financial arrangements	11
6. Disclosure to superiors	12
7. Discovery and arrest	14
Summary of argument	15
Argument	20
I. Petitioners were properly convicted under the theory	
which they urge	21
A. The trial court accepted petitioners' definition	
of "national defense"	21
B. The revealed information could be found by	
the jury to relate to the national defense as	
defined	25
C. The trial court did not err in leaving to the	-
jury the connection of the revealed infor-	
mation to the national defense, as defined.	29
II. The Act does not restrict "national defense" to the	
places enumerated in Section 1 (a)	36
A. The words of the statute	37
B. The legislative history	42
1. Comparison with 1911 Act	43
2. Action in the 64th Congress	45
3. Action in the 65th Congress	46
4. Subsequent legislation	54
C. The legislative purpose	56
D. Limitations upon the statute	58
E. The revealed information related to the	
national defense	62
III. Sections 1 (b) and 2 (a) are not unconstitutional be-	
cause they punish the disclosure of information	
relating to the national defense	63
AND THE RESERVE OF THE PARTY OF	

Argument—Continued.	Page
A. The rule against indefiniteness	64
B. Petitioners can raise only their own insub-	
stantial doubts	67
1. None has standing to complain of in-	**
definiteness except as the statute is	
applied to him	68
2. Petitioners had no substantial doubts.	74
C. Sections 1 (b) and 2 (a) of the Espionage Act	
are not unconstitutionally indefinite	- 76
1. Generality of the language	
	77
2. General considerations	80
3. The penalty applies only if there be	/
an intent to disclose military secrets_	82
4. Words of common usage	- 86
5. Technical meaning	. 87
6. The language could be no more precise.	88
7. Necessity of prolonged investigation.	* 89
8. Any uncertainty does not affect	
legitimate activity	89
9. Force of policy requiring prohibition.	90
	. 90
IV. The evidence supported the verdict and the conviction	
was proper under the statute and principles of	
eriminal procedure	91
A. The evidence supports the verdict	92
. 1. It would be immaterial if the informa-	
tion were innocuous	92
2. The information was not innocuous	93
B. The statute punishes advantage to a foreign	
nation whether or not there is injury to the	
United States	98
C Petitioners' apprintion on the commission	PC
C. Petitioners' conviction on the conspiracy	100
count need not be considered	102
Conclusion	103
Appendix A	104
Appendix B	111
CITATIONS	
Cases:	.Ver
Abrams v. United States, 250 U. S. 616	102
Acers v. United States, 164 U. S. 388	
Baker v. Warher, 231 U. S. 588	34
Daner V. Warner, 201 U. S. 300	-
Bandini Co. v. Superior Court, 284 U. S. 8	
Bird v. United States, 187 U.S. 118	56
Bourjois, Inc. v. Chapman, 301 U. S. 183	68
Brooks v. United States, 267 U. S. 432 2	D, 102
Champlin Refining Co. v. Commission, 286 U. S. 210 6	5, 69,
79, 81, 82,	87, 89
	? .

U	lases—Continued.	go
	Claassen v. United States, 142 U. S. 140	02
		6,
	69, 79, 82, 84, 85, 87, 89, 9	90
	Collins v. Kentucky, 234 U. S. 634 79, 82, 8	34
•	Commonweatth V. Rettly, 248 Mass. 1, 142 N. E. 915	84
	Connally v. General Construction Co., 269 U. S. 385	7.
	65, 66, 69, 72, 79, 81, 8	37
	Connecticut Ry. Co. v. Palmer, 305 U. S. 493	oo
	Debs v. United States, 249 U. S. 211 32 3	34
	Delaney v. United States, 263 U.S. 586	25
	Dunlop v. United States, 165 U.S. 486	34
	Evans v. United States, 153 U. S. 608	
	Federal Communications Commission v. Columbia Broad-	
-	casting System, Nos. 39-40, October Term, 1940 17 5	3
	Fox v. Washington, 286 U.S. 273	8
	Frohwerk v. United States, 249 U. S. 204	15
	General Pictures Co. v. Electric Co., 304 U. S. 175	9
	Gila Valley R. R. Co. v. Hall, 232 U. S. 943	
	Gunning v. Cooley, 281.U S. 90	14
	Herndon v. Lowry, 301 U. S. 242 70, 73, 79, 82, 85, 90, 9	1
	Hunt v. State, 195 Ind. 585, 146 N. E. 3298	
	Hygrade Provision Co. v. Sherman, 266 U.S. 497	
	71. 78. 81. 84. 8	
	International Harvester Coav. Kentucky, 234 U. S. 216 65	
	70 70 01 04 do o	
	Kansas City Southern Ry. Co. v. Anderson, 223 U.S. 325	R
	Kay v. United States, 303 U.S. 1 69 71 72 70 81	1
	Kuehner v. Irving Trust Co., 299 U. S. 445	
	Lanzella v. New Jersey, 306 U.S. 451 65, 66, 69, 72, 73, 76	0
	Levy Leasing Co. v. Siegel, 258 U. S. 242 68-69, 78, 82, 83	7
	Lloyd v. Dollison, 194 U. S. 445 65, 68, 71, 73, 77, 81, 86	1
	Martin v. United States, 100 F. (2d) 490, certiorari denied,	
	306 U. S. 649	2
	Muter V. Oregon, 273 U. S. 657	2
	78 81	
	Miller V. Strahl, 239 U. S. 426 18 69 78 81 89	2
	Minnesota v. Probate, Court, 309 U.S. 270 69. 72. 70	١.
	Mosbacher v. United States, No. 128, October Term, 1940,	
	Mulhamm to Otata 170 TEL 100 town to the	
	Nash v. United States, 229 U. S. 373 18, 34, 61, 68, 76, 81	1
	Neblett v. Carpenter, 305 11 S 207	
	Neblett v. Carpenter, 305 U. S. 297	
	Omaecheparria v. Idaho, 246 U. S. 343 19, 34, 68, 72, 78, 81, 83, 87	
	Ilmasehananna w Idaka Of Talaka Rom	
	Pullaream or Alabama OOA TT CI AGO	
	Pierce v. United States, 252 U. S. 239 15, 32, 35, 57, 102	
	POINTAPIER VI Chasekhoon 114 TT CI ONO	
	Queenan V. Oktanoma, 190 U. S. 548	

	Cases—Continued.	Page
	St. Louis, Iron Mountain & Southern Ry. Co. v. Wynne,	
	224 U. S. 354	68
		52, 35
	- Small Co. v. American Sugar Refining Co., 267 U. S. 233	69,
	79, 81,	82, 84
	Smith v. Cahoon, 286 U. S. 553 69, 72, 79,	81, 89
	Sproles v. Binford, 286 U. S. 374	82, 86
	Standard Oil Co. v. United States, 221 U. S. 1	78, 81
	Stromberg v. California, 283 U. S. 859	
	United States v. Alford, 274 U. S. 264 69.	78. 87
	United States v. American Trucking Ass'ns, 310 U.S. 534	. 54
	United States v. Brewer, 139 U. S. 278	
	United States v. Cohen Grocery Co., 255 U. S. 81	
	68, 79, 8	
	United States v. Dickerson, 310 U. S. 554	54
	United States v. Powers, 307 U. S. 214	56
	United States v. Shreveport Grain & Elevator Co., 287 U. S.	
	77 69, 72, 78, 8	81. 82
	United States v. Wurzbach, 280 U. S. 396	18,
	61, 70, 76, 78, 8	
	Usary v. State, 112 S. W. (2d) 7	84
	Washington Post Co. v. Chaloner, 250 U. S. 290	34
	Waters-Pierce Oil Co. v. Texas (No. 1), 212 U. S. 86 65, 6	
	Weeds, Inc. v. United States, 255 U.S. 109	79: 84
	Whitney v. California, 274 U.S. 357	72. 78
	Yazoo & Mississippi Ry. Co. v. Jackson Vinegar Co., 226	_,
	U. S. 217	68
	Yu Cong Eng v. Trinidad, 271 U. S. 500 66, 69, 79, 8	52. 90
	Constitution and Statutes:	,
	Sixth Amendment	66
	Defense Secrets Act of 1911, c. 226, 36 Stat. 1084	43,
	44 45 48 56 56	
	Sec. 1	44
	Sec. 2	45
	Espionage Act of June 15, 1917, c. 30, 40 Stat. 217 (50	
	U. S. C., Secs. 31–38):	
,	Sec. 1 40, 49	9, 104
	Sec. 1 (a) 2, 3, 15, 16, 20, 21, 22, 23, 25, 27, 2	8, 35,
	36, 37, 38, 39, 40, 41, 42, 45, 46, 48, 49, 53, 57, 64, 8	
	Sec. 1 (b) 2, 3, 15, 16, 17, 1	
	21, 22, 24, 26, 36, 37, 38, 39, 40, 41, 42, 45, 46, 48	8, 53,
	58, 59, 64, 67, 68, 74, 75, 76, 80, 82, 86, 88, 89, 91, 9	
	Sec. 1 (c)	
	Sec. 1 (d)	41
	Sec. 1 (e)	41
	Sec. 2 3, 17, 39, 40, 49	

54

Congressiona	l Material—Continued.		*	
55 Cong.	Rec.—Continued.			Page
1600	8			. 58
1700	0			54
	7-1718, 1756			
1759	9			60, 61
1765	2			61
1849	0			47
	1			
	4			
2014	4, 2016, 2055			47
209	7-2102, 2109-2111			48
2111	1-2122			. 48
2166	8			48
2167	7-2196, 2241-2262, 226	5-2270, 2271.		48
	2			
226	5		A	48
3129	)			49
3130	0			. 50, 52
3131		, ÷,		. 51
314	5			50
3259	9, 3266			50
	0, 3492, 3301-3307			
· 81 Cong.	Rec. 1133, 1396, 1534			56
83 Cong.	Rec :			
70-7	Rec.:		9	. 56
75_				
H. R. 29	1, 65th Cong., 1st Seas	46, 48, 49	9, 51, 52, 53, 1	00, 121
	No. 1591, 64th Cong.,			
H. Rep.	No. 69, 65th Cong.,	Sess	. 0	50
H. Rep.	No. 1650, 75th Cong.,	2d Sess		55
	64th Cong., 2d Sess			00, 111
S. 2, 65t	h Cong., 1st Sess	43, 46, 47, 49	50, 51, 52, 1	01, 116
8. Rep. 1	No. 44, 65th Cong.,	Sess		50
	108, 75th Cong., 2d Ses	88		55
Miscellaneous				
Address	of Attorney General Ja	ckson, New Y	ork State Bar	
	ation, June 29, 1940, p			
	e Criteria of Definiteness			
Ken Ma	ev. 160 gazine, Issues of April	7, 1938, April	%, 1939, and	-
July 2	7. 1939			63
Report o	f Attorney General for	1916, p. 19		43, 57
9.		. 10		

### In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 87

MIKHAIL NICHOLAS GORIN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 88

HAFIS SALICH, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

#### BRIEF FOR THE UNITED STATES

#### OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 710–736) is reported in 111 F, (2d) 712.

#### JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 22, 1940 (R. 738). The peti-

tion for writs of certiorari was filed May 21, 1940, and granted June 3, 1940 (R. 739). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Rules of Practice and Procedure in Criminal Cases promulgated by this Court May 7, 1934.

#### QUESTIONS PRESENTED

Petitioners were convicted under Sections 1 (b) and 2 (a) of the Espionage Act for obtaining and revealing information connected with the "national defense." The questions are:

- 1. Whether they were properly convicted under their own theory of those provisions, limiting "national defense" to the 24 places and things specified in Section 1 (a) of the Act.
- 2. Whether Sections 1 (b) and (2) (a) of the Espionage Act make it a crime to obtain and divulge information relating to the "national defense" but which is not directly related to the places and things specified in Section 1 (a) of that Act.
- 3. If so, whether those sections are so indefinite as to be unconstitutional.
- 4. Whether, under either theory of the Act, the court should have ruled as a matter of law that the information obtained by Salich and furnished to

<sup>&</sup>lt;sup>1</sup> The questions listed, except the first, are those discussed in the brief for the petitioners. A sixth contention is stated but not argued by petitioners (see *infra*, p. 102).

Gorin was too innocuous to relate to the national defense.

5. Whether Sections 1 (a) and 2 of the Espionage Act make it a crime to obtain and divulge information relating to the national defense which is intended to be used to the advantage of a foreign 31-38), are printed in Appendix A, infra, pp. 104-110.

#### STATUTES INVOLVED

The pertinent sections of the Espionage Act of June 15, 1917, c. 30, 40 Stat. 217 (50 U. S. C. §§ 31–38), are printed in Appendix A, infra, pp. 104–110.

#### STATEMENT

1. Proceedings Below.—On January 11, 1939, an indictment in three counts was returned against the petitioners and another in the District Court for the Southern District of California (R. 2-8). The first count charged a violation of Section 1 (b) of the Espionage Act; the second count a violation of Section 2 (a); and the third count a conspiracy to violate Section 2 (a), in violation of Section 4. The first count (R. 2-3) alleged that the defendants, for the purpose of obtaining information respecting the national defense, and with intent and reason to believe that the information to be obtained was to be used to the injury of the United States, and to the advantage of a foreign nation, did copy, take, make, and obtain certain documents,

The codefendant, Natasha Gorin (the wife of petitioner Gorin), was acquitted on all three counts (R. 32, 408, 462).

writings, and notes connected with the national defense, i. e., confidential information, reports, instruments, documents, and writings pertaining to and concerning various and numerous individuals under suspicion, observation, surveillance, and investigation belonging and contained in United States Naval Intelligence files and reports, which were described by number. The second count (R. 4-5) alleged that the defendants communicated, delivered, and transmitted to the defendant Gorin, as a representative and citizen of a foreign nation, various documents, writings, notes, instruments and information relating to the national defense, describing the same Naval Intelligence reports as were enumerated in Count 1. The third count (R. 5-8) alleged that the defendants conspired to communicate, deliver, and transmit to a foreign power and to Gorin as its representative and citizen, and to other unknown persons, documents, writings, plans, notes, instruments, and information relating to the national defense, i. e., confidential reports, etc., contained in the files of the United States Naval Intelligence.

Each of the petitioners was found guilty on all three counts (R. 32, 462). The petitioner Gorin was sentenced to two years' imprisonment and a \$10,000 fine on the first count and to six years' imprisonment on each of the other counts, the terms of imprisonment to run concurrently (R. 35-37). Petitioner Salich was sentenced to two years' im-

prisonment and a \$10,000 fine on the first count, and to four years' imprisonment on each of the other two counts, the terms of imprisonment to run concurrently (R. 37–39). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the judgments of conviction were unanimously affirmed (R. 710–736, 738).

The evidence in its main outline is undisputed and uncontradicted (see Pet. Br. 6); there are, however, numerous minor discrepancies as to detail. The evidence may be summarized as follows:

2. The Naval Intelligence Office.—The main office of the Eleventh Naval Intelligence District is at San Diego, California; the District Intelligence Officer is responsible to the Director of Naval Intelligence in Washington and to the Commandant of the Naval District (R. 109-110, 223, 307. A branch office is located at San Pedro, California, and is in charge of an Assistant Intelligence Officer (R. 110, 223). Lieutenant Commander Roachefort was in charge at San Pedro until May 1938, and Lieutenant Commander Claiborne thereafter (R. 113, 223). The office staff consists of a chief yeoman, who does secretarial work, and two civilian investigators (R. 96-97, 110-111).

The investigators were the petitioner Salich and one Stanley. Their duties were largely in the nature of counter-espionage (R. 224-225). They worked together, using an automobile and the apartment of Salich, and kept no regular working

hours (R. 128). They were not always given specific assignments, and were often left to their own initiating (R. 302). They generally gave the Assistant Intelligence Officer written reports, prepared either at their homes or at the office (R. 111, 121). Salish was paid \$3,000 a year, with \$1,000 allowed for expenses, out of cash funds to the credit of the Assistant Intelligence Officer (R. 224, 297-298).

The reports brought in by the investigators were digested by the Assistant Intelligence Officer and then destroyed (R. 111, 121-122). The original and two carbons of the Assistant Intelligence Officer's reports were sent to the San Diego office (R. 111, 121, 123). One of the copies retained at San Pedro was placed in the topical files of the Assistant Intelligence Officer and the other was placed in the Chief Yeoman's desk, arranged chronologically, for the investigators to read when they came to the office (R. 111-112, 335-336, 368).

The reports were not shown to anyone but the intelligence personnel (R. 125, 312). Salich had often been told that his work was confidential (R. 99, 116, 137-139, 229, 299, 301). Indeed, he was asked not to reveal his connection with the Naval Intelligence (R. 100, 299, 366-367), and used

<sup>&</sup>lt;sup>a</sup> Lieutenant Claiborne, in response to a subpoena in this trial, refused on instructions of his superiors to reveal any reports save those which Salich had communicated to Gorin (R. 310-311).

a Los Angeles police department badge in his work (R. 366).

3. Salich and Gorin.—Salich was born in Moscow in 1905; his father was a storekeeper (R. 329). His family fled to the east after 1917 and arrived in San Francisco in 1923 (R. 329-330). Salich became an American citizen in 1929 (R. 359). He worked in the Berkeley Police Department from 1930 to 1936, where he had an excellent reputation (R. 330, 382). Since August 1936 he had been employed in the Naval Intelligence Office at San Pedro (R. 331, 366-368). He was married in 1932 and separated from his wife in January 1938; a separation agreement, under which he was to pay her \$125 a month until February 1939, was terminated by a property settlement of \$500 in November 1938 (R. 325-326).

Gorin is a citizen of the Union of Soviet Socialist Republics (R. 89-90). He arrived in the United States in January 1936, and was employed as Director of the Los Angeles office of Intourist, Inc., a subsidiary of Amtorg Trading Corporation (R. 90, 214, 216-217). He received a salary of about \$3,300 a year, without expenses (R. 145, 218).

Salich had become acquainted with Aliavdin, a vice consul of U. S. S. R., in 1935, and saw him occasionally during the next two years (R. 168-

<sup>&#</sup>x27;He refused in 1937 to give Aliavdin information as to Japanese activity in the United States (R. 168-169, 198).

169, 198, 330). Although Salich had met Gorin in August 1937, while seeking to get information requested by Lieutenant Roachefort as to a Soviet official (R. 333), they seem not to have been acquainted until Gorin in December 1937 presented a letter of introduction from Aliavdin (R. 169, 178, 198, 334). One or several days after Gorin left the letter of introduction with Mrs. Salich, Salich went to Gorin's home, which they left to go to a nearby cocktail lounge (R. 169, 178, 198, 336).

At this first meeting, Gorin asked Salich to give him information relating to Japanese activities in the United States, assuring Salich that no harm could be done the United States. Salich said his information would be of no aid; Gorin said that one could never tell. Salich either refused or said he would think it over. (R. 169, 178, 336–337, 369.) After a few social meetings Gorin repeated his request and Salich agreed (R. 179–180, 198, 342–344). Salich thereafter met Gorin every few weeks, for a total of about 15 times, between March and December of 1937 (R. 170, 179, 327, 342, 363–364).

4. Information Given Gorin.—Gorin was interested only in Japanese activities (R. 180, 336, 346,

Stanley testified that Salich in June 1937 aid Gorin was a friend who might be a useful informant (R. 128-129) and that Salich in July 1937 invited him to meet some Russian flyers at Gorin's home (R. 130). Salich denied that he knew Gorin lived at the address to which they went (R. 334, 380).

378), and specifically disclaimed interest in information concerning the United States (R. 170). Salich said that he was unable to obtain "secret" information and that he would not have furnished it to Gorin if he had been able to obtain it (R. 182, 365). Gorin assured Salich that the information, even though unimportant in itself, might fit into a larger picture of Japanese espionage in the United States and in the U.S. S. R. (R. 180, 338, 365, 378-379). While he told Salich that his superiors were dissatisfied with the insignificant value of the information (R. 171, 181, 349, 363, 365), he did not accept Salich's offer to terminate their arrangement (R. 349, 364-365). Salich appears to have furnished Gorin with substantially all of the information gathered during this period by the Naval Intelligence Office at San Pedro which concerned Japanese activities (R. 199, cf. 369).

The information was given by oral or written summaries of the reports on file in the Naval Intelligence Office; the reports themselves were not furnished (R. 162, 163–164, 170, 351, 368–369; see R. 295. The information given Gorin was taken from some 53 Naval Intelligence Reports, and

<sup>&</sup>lt;sup>4</sup> The information included that gathered by Stanley as well as by Salich (R. 139-141).

Forty-three of these reports are in evidence (R. 259-294). Three are not: Report Nos. 1070 (R. 175), 1116 (R. 172-173), 1152 (R. 175). Some part of the information from each of seven additional reports was given: Report Nos. 552 (R. 160), 849 (R. 174), 859 (R. 174, 240-241), 967 (R. 174), 973 (R. 175), 1066 (R. 175, cf. R. 373), 1088 (R. 175).

Salich was not sure whether or not he gave Gorin othe information from 10 additional reports.

The majority of the reports, 32 in number, dealt with the movements and activities of named Japanese persons or organizations; they appear innocuous on their face but might have value when linked with other information concerning the subjects of the reports (R. 715). Three dealt with the sentiments and patriotism of the Japanese-American colony. Nine dealt with some 21 suspected Japanese spies; and three with the activities of suspicious Japanese boats. Two narrated Japanese military or sabotage inventions and suspected plans. Three named Japanese in Cali-

Report Nos. 478 (R. 163), 487 (R. 163), 522 (R. 161), 540 (R. 161), 541 (R. 161), 551 (R. 160), 554 (R. 160), 565 (R. 159), 854 (R. 174), 861 (R. 174).

Report Nos. 435 (R. 294), 439 (R. 293), 465 (R. 293), 466 (R. 292), 469 (R. 292), 472 (R. 291-292), 477 (R. 291), 479 (R. 291), 480 (R. 289-290), 482 (R. 289), 489 (R. 288-289), 495 (R. 287-288), 503 (R. 285-286), 504 (R. 284-285), 505 (R. 284), 514 (R. 280), 519 (R. 280), 525 (R. 279), 528 (R. 278-279), 529 (R. 278), 530 (R. 277-278), 534 (R. 277), 535 (R. 276), 536 (R. 275-276), 546 (R. 275), 833 (R. 259, 295), 841 (R. 260, 295), 897 (R. 265-266), 1104 (R. 268-269), 1133 (R. 263-264), 1139 (R. 263), 1145 (R. 262-263).

<sup>&</sup>lt;sup>10</sup> Report Nos. 495 (R. 287–288), 532 (R. 277), 1133 (R. 263–264). Here, as in the succeeding footnotes, a few of the reports cover more than one topic and duplicate earlier listings.

<sup>&</sup>lt;sup>11</sup> Report Nos. 507 (R. 281–282), 528 (R. 278–279), 548 (R. 274), 570 (R. 270–271), 973 (R. 175), 1081 (R. 269–270), 1104 (R. 268–269), 1110 (R. 266–267), 1129 (R. 265).

<sup>&</sup>lt;sup>12</sup> Report Nos. 586 (R. 275-276), 560 (R. 271-274), 1081 (R. 269-270).

<sup>18</sup> Report Nos. 560 (R. 271-274), 1132 (R. 264).

fornia who were thought to be communists; <sup>14</sup> Salich seems to have given the information in order that Gorin might get in touch with them himself (R. 173, 175). Four reports were concerned with Americans suspected of being communists; <sup>14</sup> these, too, appear to have been given Gorin with the thought that he might approach them himself (R. 174). One report dealt with a suspected German spy. <sup>16</sup>

Gorin assured Salich that the information could not harm the United States and that the U. S. S. R. did not want information which would do so (R. 182, 212-213, 339, 343, 375). Salich recognized his weakness and the unethical nature of his acts (R. 183), but testified that he did not believe it could harm the United States (R. 147, 181-183, 359). He said that he and Gorin each felt that the information would benefit the U. S. S. R. only so far as it had a common interest with the United States in opposition to Japan (R. 170, 172, 180, 182, 338-339, 343, 359, 360). Salich said that he did not think his conduct was in violation of the Espionage Act (R. 147, 182-183, 200).

5. Financial Arrangements.—Salich accepted financial assistance from Gorin at about the time

<sup>&</sup>lt;sup>14</sup> Report Nos. 833 (R. 259, 295), 841 (R. 260, 295), 1130 (R. 264-265).

<sup>&</sup>lt;sup>16</sup> Report Nos. 849 (R. 174, cf. R. 262), 889 (R. 261-262, 295, 174, 240), 967 (R. 174), 1066 (R. 175, cf. R. 378).

<sup>16</sup> Report No. 1088 (R. 175).

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he commenced to furnish information from the Naval Intelligence reports." Between March and November 1938 Gorin gave Salich at irregular intervals six payments of \$200 and one of \$500, for a total of \$1,700 (R. 170, 180-181, 198, 350, 361-362). Salich said that he did not expect to receive any further payments (R. 366), and that he spent at least \$100 of the money on Navy business (R. 175).

Salich testified that he considered the payments to be a loan, which he expected to repay after he had settled his affairs with his estranged wife (R. 343-344, 350-351). But he told Gorin of this understanding "just as a bythought" (R. 181). He also viewed the payments more or less as a gift (R. 170, 345). There was no definite understanding as to the amount he was to receive (R. 364); he gave Gorin neither receipts nor notes (R. 363); and he kept only mental note of the amounts received (R. 364). Gorin once offered to pay double for better information (R. 172).

6. Disclosure to Superiors.—Salich told Stanley, his coinvestigator, of Gorin's offer to pay for in-

<sup>&</sup>lt;sup>17</sup> Salich's statements take two forms: (1) he at first refused to accept money for the information (R. 178–179, 339); and (2) he first agreed to furnish the information at a meeting at which Gorin offered financial assistance (R. 179–180, 342–344).

<sup>&</sup>lt;sup>28</sup> It was also suggested that Gorin might arrange a trip to the U. S. S. R. for Salich, either without cost (R. 172) or at a reduced rate (R. 314, 315, 348).

formation of Japanese activities (R. 132, 137). Stanley threatened to tell Lieutenant Roachefort if Salich did not (R. 133-134). In March 1938 Salich told Roachefort that Gorin had approached him and offered money for information as to Japanese espionage; Roachefort told him not to see Gorin again, at least without the presence of Stanley (R. 103, 105, 116, 123, 126, 135, 172, 246-247). However, Salich advised Stanley, who did not protest, that he would not take him to Gorin for fear that this would destroy Gorin's value as a source of information (R. 341), or possibly as a source of money (R. 136).

Gorin had promised in return to give Salich information (R. 344, 346). He did offer some information, inconsequential in nature (R. 345, 347, 354-355, 371, 373) and some of which was false (R. 175). Salich reported some but not all of this information to his superiors (R. 347, 355, 371, 373-374). He testified at the trial that he told both Roachefort and Claiborne he was receiving information from Gorin (R. 342, 347, 370-371, 374). Roachefort, on duty in Cuba (R. 122), was not present at the trial; Claiborne denied that he had been so informed (R. 305-306, 312, 383-384).

<sup>&</sup>lt;sup>19</sup> Salich said that Roachefort told him to give Gorin information available in newspapers and magazines (R. 337) and to see just what Gorin was after (R. 172, 341, 370). This statement is uncorroborated by the other witnesses to the conversation, was advanced by Salich only in part prior to the trial (R. 246-247, cf. R. 172), and presumably was not accepted by the jury.

Salich did not tell his superiors that he was receiving money from Gorin (R. 371, 377).

7. Discovery and Arrest.—A laundry salesman on September 30, 1938, found a digest of Naval Intelligence reports (R. 295) and a \$50 bill in an envelope left in Gorin's clothes which were sent to be cleaned (R. 72). On learning of Mrs. Gorin's unusual interest (R. 79–80, 81–83, 84–86), he took the envelope to the Hollywood Police Station, where a copy of the digest was made (R. 73–74, 87–88, 94–95). The original was placed in the envelope and returned to Mrs. Gorin (R. 74).

Salich was arrested by agents of the Federal Bureau of Investigation on December 10, 1938 (R. 146-149). He cooperated fully with the agents, and selected the reports from which he had given Gorin information (R. 148-149, 150-165). He made full confession of the facts (R. 168-175, 178-183).

Gorin was arrested on December 12 (R. 185). He refused to discuss the case, except to deny that Salich had given him information (R. 186), until he had consulted the Soviet Embassy in Washington (R. 185–186, cf. 315–316). He conducted four telephone calls with the Embassy while the agents were in his office (R. 187–188), and was advised by the Soviet vice-consul for New York, who visited him at the jail, to say nothing (R. 207, 210). He offered no evidence at the trial and did not take the stand.

### SUMMARY OF ARGUMENT

T

A. Petitioners were convicted under their own theory of Sections 1 (b) and 2 (a) of the Espionage Act. In defining the term "national defense" the trial judge limited its meaning substantially to the places and things enumerated in Section 1 (a). Petitioners' objection goes only to the concluding portion of the charge, where the trial court left to the jury the connection of the revealed information to the national defense.

B. The Court will not review the evidence supporting the judgments below. But there was ample evidence to support the conviction upon the petitioners' theory. The Naval Intelligence office at San Pedro is plainly included within the places enumerated in Section 1 (a). The information given Gorin was taken from, and related to, the work of that office. More broadly viewed, espionage in general is closely related, both analytically and as a practical matter, to the specific places and things enumerated. Counter-espionage cannot be appreciably less related.

C. The trial court left to the jury the connection of the revealed information to the national defense. This was entirely proper. Whether petitioners object that the instructions on the necessary connection were not specific enough; or whether they insist it was a question of law alone, their contention is foreclosed by decisions of this Court. Pierce v. United States, 252 U. S. 239.

Whether or not petitioners were convicted under their own theory of Sections 1 (b) and 2 (a) of the Espionage Act, those provisions in fact punish obtaining and revealing information connected with "the national defense," unrestricted by the particular places and things enumerated in Section 1 (a).

A. The words of the statute are clear. No limitation such as petitioners urge is found in Section 1 (b) or 2 (a). "National defense" as used in Section 1 (a) would produce an absurd tautology if it were so restricted, and should not be more narrowly construed in Section 1 (b) or 2 (a). This is strongly indicated by the fact that Section 1 (b) uses an express cross-reference, as to purpose and intent, to Section 1 (a) when one is intended. The structure of the Act shows that a broad use of national defense is intended in Sections 1 (b) and 2 (a), where specific acts of obtaining or divulging information are punished, while a particularization of prohibited places is appropriate for Section 1 (a), which punishes simply going upon the place and looking about.

B. The legislative history is equivocal, but supports our construction at least as much as that of petitioners. Comparison with the Defense Secrets Act of 1911 shows our construction to be correct. The Senator in charge of the bill in terms declared that, of necessity, the "national defense" is a term broader than the enumeration of places found in Section 1 (a). The Espionage Act, so far as

material here, follows the Senate bill. But, it is true, the House conferees made a report, partially erroneous on its face, which in terms supports the petitioners' construction of Section 1 (b), although it inferentially supports our interpretation of Section 2. In these circumstances the legislative history is not a reliable guide to construction. Federal Communications Commission v. Columbia Broadcasting System, No. 39, this Term.

C. The evident purpose of the Espionage Act was to protect secret military and naval information. This purpose would be frustrated if petitioners' narrow construction were accepted.

D. Since the effect of Sections 1 (b) and 2 (a) is to protect information which, broadly speaking, is secret or confidential, and which is of a military nature, against disclosure for the purpose of injuring the United States or aiding a foreign nation, their terms need not be given an unwarrantedly narrow construction in order to protect the innocent.

E. The petitioners are obviously guilty of violating Sections 1 (b) and 2 (a) of the Espionage Act if the words "national defense" be given their ordinarily broad meaning.

## Ш

A. A statute is unconstitutional "which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning." Connally v. General Construction Co., 269 U.S. 385, 391. The pre-

cept is exemplary, but is itself a rather indefinite standard. The decisions of this Court can neither be applied nor reconciled unless attention is paid to numerous *criteria* other than the generality of the statutory language alone.

B. At the outset it seems necessary to face the question whether petitioners can raise the doubts of others or only their own. (1) While most of the decisions of this Court have examined the statute on its face, this has never been done when the standing of the assailant to do so was challenged, and the better practice, occasionally followed, is to restrict the inquiry to the doubts of the particular assailant. Fox v. Washington, 236 U.S. 273, 277; Miller v. Strahl, 239 U.S. 426, 432, 433; United States v. Wurzbach, 280 U.S. 396, 399. (2) In the case at bar, whatever might be the peripheral doubts as to the meaning of "national defense," petitioners cannot claim that they were surprised by this application of the Espionage Act.

C. But even if a general inquiry be made on the face of Sections 1 (b) and 2 (a) of the Espionage Act, they are not unconstitutionally indefinite. (1) The language, it is true, is general; in some cases generic terms of equal indefiniteness have been held valid, in others invalid. Plainly other criteria must also be applied. (2) The general considerations include the operation of the presumption of validity, and the self-evident fact that countless statutes contemplate questions of degree, and are indefinite in their peripheries. Nash v. United States, 229 U. S. 373, 377; United States v. Wurzbach, 280

U. S. 396, 399. (3) The necessity of scienter, or the substantially equivalent reason to believe, before the penalties apply, together with the limitation that the revealed information must, broadly speaking, be confidential, is conclusive that the statute is not unconstitutional for want of definiteness. Omaechevarria v. Idaho, 246 U. S. 343, 348; Hygrade Provision Co. v. Sherman, 266 U. S. 497, 501. This conclusion is corroborated by other factors applicable to the challenged provisions of the Espionage Act. "National defense" (4) is a term. of common usage, and (5) is in any event easily understood by those affected. (6) Certainly the language could be made no more precise without weakening the statute. (7) There is no necessity of a prolonged investigation to determine the applicability of the statute, (8) any uncertainty as to its meaning does not affect innocent activity, and (9) there are strong reasons of policy for enacting the prohibition in the most effective terms.

# IV

A. The evidence will not be reviewed here, but offers ample support for the verdict. (1) It is immaterial under the statute whether or not the revealed information was innocuous, so long as it was intended to be used to the injury of the United States or to the advantage of a foreign nation. (2) But, if it be material, the revealed information in point of fact was not innocuous.

B. Sections 1 (b) and 2 (a) punish the disclosure of information intended to be used for the advantage of a foreign nation, whether or not an injury to the United States is intended. The plain meaning of the statutory language is confirmed both by the legislative history and by the practical reasons for the prohibition.

C. There is no need to consider the conviction under the conspiracy count, since the sentence is concurrent with those on the other counts. Brooks v. United States, 267 U.S. 432, 441.

#### ARGUMENT

Petitioners advance a number of reasons why the decision below should be reversed: (1) Sections 1 (b) and 2 (a) of the Espionage Act, they say, make it a crime only to reveal information directly relating to the places specified in Section 1 (a). (2) If the term "national defense" has a broader denotation, those parts of the Act are unconstitutional. (3) The case should not have been left to the jury, because (a) the revealed information as a matter of law was too innocuous to injure the United States or advantage a foreign nation, and (b) whether or not the information related to the "national defense" was a question of law and not of fact. (4) The jury should have been instructed that "the advantage of any foreign nation" meant only its advantage as against the United States. We contest each of these arguments. But several become irrelevant or unimportant when it is

considered that the petitioners were convicted under instructions which adopted their own theory of Sections 1 (b) and 2 (a) of the Espionage Act. We shall therefore, first show that petitioners cannot complain of the decision below, because they were convicted under their own theory, and thereafter deal with their specific contentions.

I

# PETITIONERS WERE PROFERLY CONVICTED UNDER THE THEORY WHICH THEY URGE

A. THE TRIAL COURT ACCEPTED PETITIONERS' DEFINITION OF "NATIONAL DEFENSE"

Section 1 (a) of the Espionage Act punishes any one who, for the purpose of obtaining information respecting the national defense, and with intent or reason to believe that the information will be used to the injury of the United States or the advantage of a foreign nation, goes upon or otherwise obtains information concerning—

any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dock-yard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense \* \* \*.

Section 1 (b) punishes anyone who, with a similar intent, for the purpose of obtaining information concerning the national defense, copies, takes, or obtains any document, writing, or note "of any-

thing connected with the national defense." Section 2 (a) punishes anyone who, with a similar intent, communicates or delivers to a representative or citizen of a foreign nation any document, writing, or information "relating to the national defense." The circuit court of appeals held (R. 722-726) that "the national defense" as used in Sections 1 (b) and 2 (a) was not limited to the specific places enumerated in Section 1 (a). But, as the court noted (R. 726-727), the instructions of the district court adopted a contrary view, and limited "the national defense" substantially to the places enumerated in Section 1 (a).1 If this be the case, petitioners cannot complain of the broader construction adopted by the court of appeals, since they were convicted under their own theory.

1. The instructions of the district court define "national defense" in terms to which petitioners apparently do not object, apart from the freedom which the court allowed the jury (Br. 9, 59-61). The instructions defining "the national defense" are detailed (R. 429-434, 437, 438, 444). In brief, the court charged the jury that it included all things directly connected with the nation's defense against its enemies men, ships, planes, forts, guns (R. 430), and also the secondary lines of defense: storage of reserves; communications of armed forces, transportation, and manufacture of war supplies (R. 430-431). Thus, as petitioners seem

to recognize (Br. 9, 59-60), the instructions limit the term "national defense" to the places specified in Section 1 (a) of the Espionage Act, and reflect the construction petitioners themselves urge.

2. They protest, however, that this acceptance of their definition was negatived by the concluding portion of the charge relating to national defense, which left too much to the jury (Br. 9, 56-61). However, the trial court did not leave the definition of national defense to the jury, but only the connection of the revealed information to the national defense. It charged (R. 434):

You are, then, to remember that the information, documents, or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availablity of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

<sup>1</sup> The instructions specified "meth" and "guns," neither of which is enumerated in Section 1 (a). But petitioners do not complain on this score.

They urge, it is true, that "the jury was guided into a realm of pure speculation," and quote two sentences from the court's charge (Br. 58). But those sentences are separated by 4 pages. The first sentence, which speaks of the national defense in general terms, is simply an introduction to the specific definition given by the court (R. 430). The second leaves to the jury not the meaning of "national defense" but the connection of the revealed information to the national defense (R. 434).

Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions.

This portion of the charge, which petitioners find objectionable, in no way qualifies the definition of national defense, which they find acceptable. While we think that the earlier portions of the charge, defining "national defense," unduly narrow the meaning of Sections 1 (b) and 2 (a) of the Espionage Act, this is an error which is favorable to petitioners. There is, therefore, no ground on which they can complain as to the construction of those sections which was adopted by the trial court.

Petitioners' objections, then, must be either (a) that there was no evidence to submit to the jury showing the connection or relationship of the revealed information to the national defense as acceptably defined (see Br. 55–56, 59, 61), or (b) that the question should not have been left to the jury at all, either because the instructions defining connection were inadequate (see Br. 58) or because the question is necessarily one of law (see Br. 61). We are not clear which of these objections petitioners press. We shall, therefore, answer each.

B. THE REVEALED INFORMATION COULD BE FOUND BY THE JURY TO RELATE TO THE NATIONAL DEFENSE AS DEFINED

The verdict of the jury was approved not only by the district court but also by the court below on petitioners' theory of the statute as well as on a broader interpretation of "national defense." This Court, therefore, will not review the adequacy of the evidence to support the verdict. Delaney v. United States, 263 U. S. 586, 589-590.

But even if the Court were to examine the evidence, it would find that the jury had before it ample evidence to support a conclusion that the information given by Salich to Gofin was connected with the components of the national defense which are specifically enumerated in Section 1 (a) of the Act. This is shown (1) by the direct relation to a few of the places specified in Section 1 (a), and (2) by the secondary connection with almost all of those places and things.

1. Section 1 (a) punishes those who with intent to injure the United States or advantage a foreign nation go upon or otherwise obtain information concerning—

any \* \* office, or other place connected with the national defense, owned \* \* or under the control of the United States.

It cannot be doubted that the branch office of the Naval Intelligence located at San Pedro meets this definition. The only arguable question under Sections 1 (b) and 2 (a) is whether the information given Gorin by Salich was "connected with" (Sec. 1 (b)), or was information "relating to" (Sec. 2 (a)), the Naval Intelligence office at San Pedro.

Salich gave Gorin information from at least 53 reports prepared by the Assistant Intelligence Officer (supra, pp. 9-10). Some of the information, at least, he could have obtained only by reading the carbons kept in the secretary's desk for the information of the investigators (R: 139-140). All of the information mentioned in the record was abstracted from or substantially duplicated the reports made in the course of his duties by the Assistant Intelligence Officer in the San Pedro office. Their cumulative information gave a very precise picture of an important part of the work of the San Pedro office: its attempted counter-espionage of Japanese agents. We do not see that a fairminded jury could have concluded that this information had no connection with or relation to the San Pedro office of the Naval Intelligence. Certainly there was ample evidence to support its verdict that there was such a connection or relationship.

2. The same result is indicated if the issue be spread upon a larger canvas. Naval vessels and aircraft are, of course, included within the particularization of the national defense which is found in Section 1 (a). The issue on this point is whether information relating to foreign espionage or curiosity as to these things and places is connected with or relates to those things.

The great bulk of the reports from which Salich gave Gorin information relate to Japanese movements and activities, with the orienting emphasis upon suspected or probable espionage by Japanese agents (supra, pp. 10-11). Several of the reports refer specifically to Japanese observation of naval vessels and aircraft. Espionage, or suspected espionage, of naval vessels and of aircraft seems certainly to be an activity "connected with," or "relating to," those vessels and aircraft. Information as to that espionage, or suspected espionage, as an analytical matter, seems by the same token to be information "concerning," "connected with," or "relating to" the vessels and aircraft.

The connection is also sufficiently close as a practical matter. The value of the armed defenses of the nation does not rest alone upon their number

That subdivision speaks of "any vessel, aircraft owned by the United States \* \* \* "

Report Nos. 560 (R. 273-274), 1081 (R. 269). Report Nos. 560 (R. 274), 1081 (R. 270).

Report Nos. 480 (R. 290), 482 (R. 289) and 1081 (R. 269-270) deal with Japanese observation of oil refineries. The record, however, does not show whether any of these were operating under contract with the United States, and so it cannot be said that they are included within Section 1 (a).

and weight, but also upon the ignorance of foreign nations as to their methods of operation, their advantages, and their limitations. A secret weapon is far more valuable than a known weapon of otherwise equal power. The intricate web of espionage and counterespionage which this record suggests is ample demonstration that secrecy is a component part of any instrument of war.

If espionage is thus so closely related to the specific instruments of national defense, counterespionage cannot be far removed. A known espionage agent is of very limited value to his own government; even a suspicion that a given individual is an espionage agent may be a useful defense against his activities.

There would, we believe, be little question that the information sold or given by Salich to Gorin related directly to the specific places and things enumerated in Section 1 (a) if the information had been placed at the disposal of Japan. In that case, it would be quite apparent that a foreign power had been given information which would enable it more effectively to uncover secret information as to the specific instruments of our national defense—the navy, the army, and the vital industries. And, so far as the character of the information is concerned, it is related as directly to the specific places and things enumerated in Section 1 (a) when it is

See, for example, Address of Attorney General Jackson, New York State Bar Association, June 29, 1940, pp. 7–8.

given to the U.S.S.R. as when it is given to Japan.

The jury, therefore, was entirely justified in a conclusion that the utility of specific instruments of war cannot be divorced from espionage, and that espionage cannot be separated from counter-espionage.

C. THE TRIAL COURT DID NOT ERR IN LEAVING TO THE JURY THE CONNECTION OF THE REVEALED INFORMATION TO THE NATIONAL DEFENSE, AS DEFINED

The instructions of the district court, as we have shown, defined national defense with particularity and in accord with petitioners' contentions. It did, however, leave to the jury the connection or relationship of the revealed information to the national defense. This, we submit, was entirely proper, as the court below held (R. 726).

1. The judge instructed the jury (R. 434):

Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions.

The fact that it was given to the U.S.S.R. and not to Japan may, however, bear upon the different questions whether it was too innocuous to warrant conviction (infra, pp. 92-98) and whether it is necessary under the Espionage Act that the information be used to the injury of the United States as well as to the advantage of a foreign nation (infra, pp. 98-102):

But they were not given blanket authority to devise any criteria they chose in order to determine the connection of the revealed information to the national defense. They were charged, in general terms, that (R. 434)—

You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct.

These general admonitions may well have been sufficient. But the preceding parts of the charge went further, and gave a more precise illustration of the requisite connection. Thus, the jury was instructed (R. 431-432):

for purposes of prosecution under these statutes, the information, documents, plans, maps, etc., connected with these places or things must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation. Thus a map of a mine-field would be a document directly affecting the usefulness of that mine-field, for if such map should fall into the hands of another country the ships of that power might easily pass

through the mine-field. Thus its usefulness as an instrument of national defense would be nullified as against that nation.

Similarly, even information that representatives or agents of some foreign power were in possession of such a map or plan or the map or plan of a shore battery, might likewise directly concern the usefulness of that mine field or that battery as an instrument of defense. Manifestly it might have to be rebuilt or changed. Such information might be essential to any successful naval strategy in that area during wartime.

The district court offered another illustrative example of the type of relationship or connection contemplated by the statute; it charged (R. 434):

Thus a document narrating the fact that a certain foreign power has definite information as to the exact draught of our vessels might be vital to the military and naval defense of our country. For from the standpoint of military or naval strategy it might not only be dangerous to us for a foreign power to know our weaknesses and our limitations, but it might also be dangerous to us when such a foreign power knows that we know that they know of our limitations.

There can be no automatic measure of the precision with which a judge must instruct the jury on questions such as this. The ultimate inquiry must be only whether the jury was given sufficient guidance to determine what the statute means. Gram-

marians and rhetoricians might quarrel endlessly about the precise content of "connected with" or "relating to." One can doubt that any refinement of definition would make their meaning any more clear to juryman or attorney than the words carry in common usage. But if refinement be necessary, that offered by the district court seems unobjectionable. In substance he said: (1) foreign knowledge of the operation of instruments of war has a connection with those instruments; (2) so, too, knowledge of the limitations of our instruments of war is related to the operation of those instruments; and (3) the relationship must be reasonable and direct, not strained or arbitrary.

The general charge of the trial judge, even excluding the added particularity found in his illustrative examples of "connection" with the national defense, is at least as specific as the general instructions as to obstruction of the recruiting service (under Section 3 of the Espionage Act) found in the convictions approved by this Court. Schenck v. United States, 249 U. S. 47, No. 437, October Term, 1918 (R. 66-67); Debs v. United States, 249 U. S. 211, No. 714, October Term, 1918 (R. 269); Pierce v. United States, 252 U. S. 239, No. 234, October Term, 1919 (R. 204-205). We have found no closely analogous case in which this Court has in terms considered objections directed to the generality of the charge. But it has made it clear that the jury's

function in matters such as this must of necessity be performed with only general guidance from the Court. Thus, in Acers v. United States, 164 U.S. 388, 391, the defendant, convicted of assault with intent to kill, had struck the prosecuting witness with a stone. This Court held that the trial judge had properly left to the jury whether the stone was a "deadly weapon" under general instructions as to the nature of a "deadly weapon." Again, in Dunlop v. United States, 165 U. S. 486, the Court sustained very broad instructions defining "obscene" in a criminal proseeution. Since the word "obscene" is a moderately technical one, ordinarily requiring at least some definition, it would seem clear that the charge in the case at bar defining "connection"-a word with no technical significance beyond its everyday meaning-was more than adequate.

2. It may be that petitioners urge that the question should not have been left to the jury at all, but that the judge should instead have given binding instructions as to whether the revealed information related to or was connected with the specific places

<sup>&</sup>lt;sup>8</sup> In his instructions the trial judge said (165 U. S. at 500):

<sup>&</sup>quot;Now, what is (are) obscene, lascivious, lewd or indecent publications is largely a question of your own conscience and your own opinion; but it must come—before it can be said of such literature or publication—it must come up to this point: that it must be calculated with the ordinary reader to deprave him, deprave his morals, or lead to impure purposes. \* \* "

and things enumerated in the charge as constituting the national defense. Either of two considerations shows that this argument, if it be made, is untenable.

In the first place, the result would be an almost revolutionary narrowing of the jury's function. It is probable that the petitioner's argument proceeds from the premise that, since the primary facts are not in dispute, it is the duty of the judge, as a matter of law, to determine the ultimate conclusion flowing from those facts. But it has been settled in a host of situations that the jury must find not only the primary facts but also the ultimate conclusion.

The most obvious field in which this is so is that of negligence law. Even though the primary facts be admitted, it is of course still a jury question whether those facts show negligence as that term is defined by the court. Gunning v. Cooley, 281 U. S. 90, 94. So, also, where the question is one of proximate cause, it is for the jury to draw the inference of causation even from undisputed facts. Gila Valley R. R. Co. v. Hall, 232 U. S. 94, 99-100. Other examples are the issues: whether admitted statements are defamatory, Washington Post Co. v. Chaloner, 250 U. S. 290, Baker v. Warner, 231, U. S. 588, 593-594; whether certain . facts show insanity, Queenan v. Oklahoma, 190 U. S. 548; whether a combination "unduly" restricts competition or restrains trade within the meaning of the Sherman Act. Nash v. United States, 229 U. S. 373; 377; whether an instrument is a "deadly weapon," Acres v. United States, 164 U. S. 388; whether certain matter is gobscene," Dunlop v. United States, 165 U.S. 486; and whether certain conditions. and facts describe a "cattle range," Omaechevarria v. Idaho, 27 Idaho 797, 807, affirmed, 246 U.S. 343.

The same question was raised in *Pierce* v. *United* States, 252 U. S. 239, where the defendants were convicted under Section 3 of the Espionage Act. The Court said <sup>10</sup> (252 U. S. at 250):

Whether the printed words would in fact produce as a proximate result a material interference with the recruiting or enlistment service, or the operation or success of the forces of the United States, was a question for the jury to decide in view of all the circumstances of the time and considering the place and manner of distribution. \* \* \*

The opinion cited as authority three other cases under the Espionage Act where the same conclusion was implicit in the decisions and opinions of the Court. Schenck v. United States, 249 U. S. 47, 52; Frohwerk v. United States, 249 U. S. 204, 208; Debs. v. United States, 249 U. S. 211, 215. These cases are conclusive of the issue here.

In the second place, petitioners do not of course urge that the judge should have directed a verdict of guilty. Their contention then must be that the court should have instructed the jury as a matter of law that the revealed information was unconnected with the national defense as particularly defined in Section 1 (a) of the Act. In this view, their argument is simply that there was no evidence

<sup>&</sup>lt;sup>16</sup> Justices Holmes and Brandeis dissented, but not as to the role of the jury. They concurred in the Schenck, Frohwerk, and Debs decisions, and dissented here on the construction of Section 3 and on the ground that there was no evidence to support the verdict.

of connection with the national defense to go to the jury. But, as we have shown, there was ample evidence to support such a conclusion.

## $\mathbf{II}$

THE ACT DOES NOT RESTRICT "NATIONAL DEFENSE" TO THE PLACES ENUMERATED IN SECTION 1 (a)

We have shown that petitioners were properly convicted under their own interpretation of Sections 1 (b) and 2 (a) of the Espionage Act: that those provisions are restricted to obtaining and revealing information relating to the places specified in Section 1 (a). But, whether or not this be the case, they are plainly covered by the statutory prohibitions if they be read, as they should, to punish obtaining and revealing information relating to the "national defense," unrestricted by the particularization of places and things found in Section 1 (a).

In the succeeding sections we shall show that:

(a) the terms of the Act quite plainly do not limit "national defense" as used in Sections 1 (b) and 2 (a) to the particular places found in Section 1 (a); (b) the legislative history is equivocal, but supports our construction—rather more than that of petitioners; (c) the legislative purpose would be frustrated by petitioners' construction; (d) the term "national defense" is not allembracing, but must be read with several evident limitations; and (e) the petitioners' offense is obviously covered by the statute as so construed.

### A. THE WORDS OF THE STATUTE

Section 1 (a) of the Espionage Act punishes anyone who, "for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation"—

goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense.

Section 1 (b) of the Act, set off from subsection (a) by a semicolon but not by a paragraph, punishes anyone who—

for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; \* \* \*

Section 2 (a) of the Act, a wholly independent provision, punishes anyone who—

> with intent or reason to believe that it is to be used to the injury of the United States

or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, " or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, " \*

We submit that the term "national defense" cannot reasonably he read to mean only the twenty-four places specified in Section 1 (a). The provisions of Sections 1 (b) and 2 (a) concededly spell out no such limitation, and there can be no tacit or implied cross-reference to the particularization found in Section 1 (a). This conclusion is required both by the text and the structure of the Act.

1. Section 1 (a) concludes its specification of places by punishing those who go upon or otherwise obtain information concerning "any vessel, aircraft. " " or other place connected with the national defense." Quite obviously "national defense" as used in Section 1 (a) is broader than the preceding particularization of places and things. Otherwise the terms would be a patent surplusage. It would be an absurd tautology for the draftsmen to have concluded its particulari-

zation with a generic term which meant simply that the particularization was to be repeated once more.

Since the term "national defense" has a broader meaning in Section 1 (a) itself than the enumerated places, it must have at least as broad a meaning in the other provisions of the Act.

2. Petitioners' insistence that there is an implied cross-reference in Sections 1 (b) and 2 (a) to the twenty-four places is contradicted by the general rule that the draftsman who intends a himitation by reference ordinarily says so. Indeed, in Section 1 (b) itself there is a clear example of the way to accomplish a gross-reference to Section 1 (a), for it punishes obtaining sketches or notes of anything connected with the national defense when done "for the purpose aforesaid, and with like intent or reason to believe." It is hardly to be thought that the draftsman who so carefully made his cross-reference in the adjectival phrase limiting the subject would fail to make a cross-reference, if any had been intended, in the adjectival phrase limiting the object.

As for Section 2 (a), there is not even a tenuous association with Section 1 (a). It is a separate section entirely, and is not even connected with semicolons. Congress even repeated in full the description of the necessary purpose and intent required both under Section 2 and Section 1 (a) and (b). Yet, if petitioners are correct, the term

"national defense" in Section 2 would have to be read as an unexpressed cross-reference to the specific places enumerated only in Section 1 (a).

3. The structure of the Espionage Act precludes the implied cross-reference upon which petitioners rely. In broad outline, Section 1 punishes obtaining confidential information relating to the national defense while Section 2 punishes its communication to foreign nations.1 If the analysis stopped here, there might be thought to be no reason for differentiating Section 1 (a) from Sections 1 (b) and 2 (a). But a further break-down of Section 1 shows a very real distinction between Section 1 (a) and the other provisions. For Section 1 (a) is confined to observation as such; it contemplates going upon, or flying over, a vessel or aircraft and looking around. It punishes, in other words, simply observation or perception, when done with the requisite intent. There was, therefore, a very real reason to limit to a specified list the places where one could go and look about only at his peril.2

Other sections are irrelevant in this regard. Section 3 deals with disloyal statements and publications; Section 4 punishes conspiracies to violate Sections 2 or 3; Section 5 punishes harboring or concealing an offender under the Act; and Section 6 authorizes the President to expand the list of places specified in Section 1 (a).

<sup>&</sup>lt;sup>2</sup> Thus, Section 6 authorizes the President by proclamation to "designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use

But Sections 1 (b), 1 (c), 1 (d), 1 (e), and 2 (a) each deals with a concrete and specific act: copying a sketch or writing, receiving or giving away a document, losing a photograph through gross negligence, or delivering information to a representative of a foreign nation. They do not, as does Section 1 (a), refer to any place connected with the national defense; they speak instead of anything connected with the national defense, a considerably broader category. This is because the later subdivisions are directed not at the casual glance of the curious visitor but at the deliberate acts of one searching out and communicating secret information. There was, therefore, no occasion to embark upon a narrow and detailed specification of the types of forbidden information, even though in Section 1 (a) protection of the citizen might suggest a precise particularization of the places which could safely be visited only by the pure in heart.

In this view, the Act uses the term "national defense" in a wholly comprehensible manner. It is a generic concept of broad connotations, refer-

of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title: *Provided*, That he shall determine that information with respect thereto would be prejudicial to the national defense."

That Section 6 speaks of "the purposes of this title" means no more than a reference to Section 1 (a) and to Sections 4, 5, and 8 which deal with the extent and sanctions of the Act.

ring to the military and naval establishments and the related activities of national preparedness. In Sections 1 (b) through 2 (a), there is no occasion to specify its content more narrowly, for the prohibited acts are specific. But in Section 1 (a) the forbidden act is simply going on the place and looking.3 Congress therefore specified with care the places where one could not look with a guilty intent. In that subdivision, it used the term "national defense" not to define the forbidden act, which is going on a specified place and observing what is there, but instead to limit the extent of the prohibition: (a) the forbidden purpose is "obtaining information respecting the national defense," and (b) the "other place" owned, constructed, or controlled by the United States must be "connected with the national defense."

## B. THE LEGISLATIVE HISTORY

The language of the statute, as we have shown, is plain enough. The legislative history of the Espionage Act, on the other hand, is highly confused. We think that it can safely be used only against the full background of the legislative proceedings out of which the Act grew.

<sup>\*</sup>The added prohibition "or otherwise obtains information" is, of course, a catch-all which might in some circumstances make subdivision (a) coextensive with the subsequent subdivisions. It was added by the Conference Committee and did not appear in the earlier versions of the bill. See Appendix B, infra, pp. 111, 116.

Prior to the passage of the Espionage Act of 1917 the only federal law punishing espionage activities in time of peace was the Defense Secrets Act of 1911 (Act of March 3, 1911, c. 226, 36 Stat. 1084). This Act was declared to be inadequate by the Attorney General in his report for the year 1916. (Report of Attorney General for 1916, p. 19.) The Attorney General submitted to Congress a proposed revision of the Act of 1911. His suggestions, made after consultation with the Army and Navy departments, resulted in S. 8148 being introduced in the 64th Congress.

S. 8148 was reported to the Senate, with amendments, by the Senate Committee on the Judiciary of which Senator Overman was chairman (54 Cong. Rec. 2819). After debate, it passed the Senate (54 Cong. Rec. 3665). It then went to the House Committee on the Judiciary (54 Cong. Rec. 3782), which reported it with further amendments (54 Cong. Rec. 4563). No further action was taken in the 64th Congress. It was revived in the 65th Congress, however, as chapter 2 of S. 2; this, through incorporation into H. R. 291, became, after amendments, the Espionage Act of 1917. See 55 Cong. Rec. 778.

1. Comparison with 1911 Act.—Before undertaking to follow through the rather considerable legislative history of the Espionage Act of 1917, it is instructive to compare its terms with those of

the Defense Secrets Act of 1911 (c. 226, 36 Stat. 1084), upon which it is obviously modeled.

The second clause of Section 1 of the 1911 Act forbids obtaining information with respect to the national defense by anyone "upon any vessel, or in or near any such place." This clause restricted

The revelant provisions of the 1911 Act are:

"That whoever, for the purpose of obtaining information respecting the national defense, to which he is not lawfully entitled, goes upon any vessel, or enters any navy yard, naval station, fort, battery, torpedo station, arsenal, camp, factory, building, office, or other place connected with the national defense, owned or constructed or improcess of construction by the United States, or in the possession or under the control of the United States or any of its authorities or agents, and whether situated within the United States or in any place noncontiguous to but subject to the jurisdiction thereof; or whoever, when lawfully or unlawfully upon any vessel, or in or near any such place, without proper authority, obtains, takes, or makes, or attempts to obtain, take, or make, any document, sketch, photograph, photographic negative, plan, model, or knowledge of any thing connected with the national defense to which he is not entitled; or whoever, without proper authority, receives or obtains, or undertakes or agrees to receive or obtain, from any person, any such document, sketch, photograph, photographic negative, plan, model, or knowledge, knowing the same to have been so obtained, taken, or made; or whoever, having possession of or control over any such document, sketch, photograph, photographic negative, plan, model, or knowledge, willfully and without proper authority, communicates or attempts to communicate the same to any person not entitled to receive it, or to whom the same ought not, in the interest of the national defense, be communicated at that time; or whoever, being lawfully intrusted with any such document, sketch, photograph, photographic negative, plan, model, or knowledge, willfully and in breach of his trust, so

the operation of the second clause to persons upon the places and things enumerated in the first clause. Its omission from the corresponding provisions of Section 1 (b) of the 1917 Act must have been deliberate, and shows that Section 1 (b) is not to be limited, as was the corresponding second clause of the 1911 Act, to the places enumerated in Section 1 (a).

2. Action in the 64th Congress.—The bill considered in the 64th Congress was S. 8148. It was patterned on the 1911 Act, as was explained by Senator Overman (54 Cong. Rec. 3590). So far as concerns the construction to be given "national defense," S. 8148 differs in no substantial respect from the Espionage Act at finally enacted.

In the course of the debate, Senator Overman, who was in charge of the bill, made it plain that "other place connected with the national defense," as used in Section 1 (a), is broader than the enumerated places. An amendment was offered to strike out these words, in order that the prohibited places might be restricted to those enumerated (54)

communicates or attempts to communicate the same, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

<sup>&</sup>quot;SEC. 2. That whoever, having committed any offense defined in the preceding section, communicates or attempts to communicate to any foreign government, or to any agent or employee thereof, any document, sketch, photograph, photographic negative, plan, model, or knowledge so obtained, taken, or made, or so intrusted to him, shall be imprisoned not more than ten years."

S. 8148 is set in Appendix B, infra, pp. 111-116.

Cong. Rec. 3599-3600). Senator Overman urged its defeat because (54 Cong. Rec. 3601):

No Senator knows what are these plans or what specific articles are in some buildings that ought to be protected, and we made it general to protect everything connected with the national defense.

The Amendment was defeated (54 Cong. Rec. 3601). Plainly enough, if the term in Section 1 (a) is broader than the enumerated places, so is it in Sections 1 (b) and 2 (a).

The bill, S. 8148, then went to the House Committee on the Judiciary (54 Cong. Rec. 3782), which reported it with amendments irrelevant here (54 Cong. Rec. 4563; see H. Rep. No. 1591, 64th Cong., 2d Sess.) No further action was taken in the 64th Congress.

- 3. Action in the 65th Congress.—The bill, in the form reported by the House Committee in the 64th Congress, was introduced into the 65th Congress as the espionage chapter of S. 2 (55 Cong. Rec. 155). S. 2 was sent to the Judiciary Committee of the Senate (55 Cong. Rec. 155), which reported it favorably with certain amendments, unimportant, here (55 Cong. Rec. 769).
  - S. 2 was then debated in the Senate as in the Committee of the Whole and the espionage chapter was adopted (55 Cong. Rec. 776–794, 831–849, 871–891).

o S. 2, as reported out by the Judiciary Committee, is reprinted in Appendix B, infra, pp. 116-121.

The whole debate, with inconsequential exceptions, was devoted to Section 2 (c), the "censorship" provisions, authorizing the President to issue regulations forbidding anyone to elicit "information related to the public defense or calculated to be, or which might be, directly or indirectly, useful to the enemy." The term "public defense" was criticized as permitting the President to specify and forbid information about any aspect of our national life (e. g., 55 Cong. Rec. 876, 877). At this stage the criticisms were unavailing."

During debate on the other chapters of S. 2, in the Committee of the Whole, word was sent that the House had passed H. R. 291, which likewise dealt with espionage (55 Cong. Rec. 1849). H. R. 291 was then referred to the Senate Committee on the Judiciary (55 Cong. Rec. 1861). It was reported, with an amendment; the amendment proposed to strike out all after the enacting clause and inserted, instead, the provisions of S. 2, as amended up to that time, in the Senate as in Committee of the Whole (55 Cong. Rec. 2014). Under unanimous consent, the Senate, as in Committee of the Whole, then proceeded to consider H. R. 291, which, as thus amended, incorporated the provisions of S. 2 (55 Cong. Rec. 2014, 2016, 2055).

An amendment, by Senator Cummins, to limit the power of the President to make regulations to the movement of the armed forces and plans of operation, was defeated (55 Cong. Rec. 886). And Senator Thomas' amendment, to strike Section 2 (c), was likewise defeated (55 Cong. Rec. 887).

There was no further debate in the Committee of the Whole touching directly upon Section 1 (a) and (b). But Section 2 (c), the censorship section, was severely criticized (55 Cong. Rec. 2097-2102, 2109-2111) and an amendment (55 Cong. Rec. 2111-2122) to strike out all of subsection (c) was agreed to (55 Cong. Rec. 2166). Debate continued on other chapters of the bill, and it was adopted and a conference requested (55 Cong. Rec. 2167-2196, 2241-2262, 2265-2270, 2271).

Thus the task of the conferees was essentially that of reconciling S. 2 and H. R. 291. The former was quite similar to the Act of 1911 and to the Espionage Act as adopted. H. R. 291, on the other hand, followed a rather different pattern. It combined Sections 1 (a) to 1 (c) of the Senate version into simpler prohibitions against getting or disclosing information concerned with the national defense. There was no enumeration of forbidden places comparable to Section 1 (a); indeed, there was no prohibition of "going upon," etc., any place. It used the term "national defense" both in its prohibition against obtaining and disclosing information and in its censorship provisions. And, in Section 1202, it defined "national defense," for the

<sup>\*</sup>Senator Overman offered a modified censorship section, 2 (c), known as the Cummins amendment, and similar to the amended section stricken before. 55 Cong. Rec. 2262. It was rejected. 55 Cong. Rec. 2265.

The relevant provisions of H. R. 291 as it passed the House are set out in Appendix B, infra, pp. 121-124.

purpose of all titles of the Act, in broad terms, to include substantially every person, place, or thing having to do with the military or naval defense or security of the nation.

The House managers, in their statement, explained that the Senate bill was "the basis of their final agreement." So far as concerns the meaning of "national defense," the conferees made no material change from the Senate bill in Sections 1 and 2.11 Section 1202 of the House bill, defining national defense in broad terms, was eliminated.12

<sup>&</sup>lt;sup>10</sup> They explained the conference work as follows (55 Cong. Rec. 3129):

<sup>&</sup>quot;The conferees took up the Senate amendment and made it the basis of their final agreement. Some of the sections were agreed to as written, others were amended so as to embody provisions contained in the House bill, or sections from the House bill were substituted for them, and in a few instances sections were rewritten in conference in order to harmonize the views of the two Houses.

<sup>&</sup>lt;sup>11</sup> In Section 1 (a) there was added to the words "goes upon, enters, flies over" the further phrase "or otherwise obtains information concerning."

<sup>&</sup>lt;sup>12</sup> In addition, the conferees eliminated from Section 6 the provision giving the President power "in time of war or in case of military necessity to designate any matter, thing, or information belonging to the Government or contained in the records or files of any of the Executive Departments, or of other Government offices, as information relating to the national defense, to which no person (unless duly authorized) shall be lawfully entitled within the meaning of this chapter." It should be noted, however, that S. 2 and the final bill reported by the Conference both authorized the President "in time of war or in case of military necessity" [the final draft reads "national emergency"] to "designate any place other than those set forth in paragraph [subsec-

No other change material to the present issue was made.<sup>18</sup> It is evident, therefore, that the bill as passed was in this respect substantially the Senate bill. Yet the House managers stated:

The several provisions under this title in the conferees' report do not materially change the provisions of this title as passed by the House. Section 1 sets out the places connected with the national defense to which the prohibitions of the section apply while the similar provision of the House bill designates such places in general terms.

Section 7 [Section 6 of the Act] was not in the House bill but was taken from the Senate amendment. It was adopted because of the changes made in section 1, and for the further reason that section 1202 of the House bill, which gave the words "national defense" a broad meaning, was stricken out.

tion] (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed [the final draft added "or stored"] for the purposes of this chapter." The exercise of power, under both S. 2 and the conference bill, was conditioned on a finding that "information with respect thereto would be prejudicial to the national defense."

<sup>&</sup>lt;sup>13</sup> A section containing modified censorship provisions was added to the Senate bill in Conference (55 Cong. Rec. 3130). The House, however, voted to recommit the bill to Conference with instructions to delete the censorship provision (55 Cong. Rec. 3145). When this was done, the second Conference Report (S. Rept. No. 44, H. Rep. No. 69, 55 Cong. Rec. 3259, 3266) was agreed to (55 Cong. Rec. 3440, 3492, 3301–3307).

It is this statement of the House conferees, together with a similar statement made on the floor of the House," upon which petitioners place their chief reliance (Br. 28-33). We recognize that these excerpts offer weighty support to petitioners, but insist that the statement simply does not reflect what Congress or the conferees in fact did: (1) Section 1 of H. R. 291 did not designate in general terms "the places connected with the national defense to which the prohibitions of the section apply," for, in contrast to Section 1 (a) of S. 2, it made no provision whatever as to forbidden places. (2) The House managers implied that Section 6 of the Act was taken in conference from the Senate bill (note 12, supra, pp. 49-50) because of changes made in Section 1 of H. R. 291 and the elimination of Section 1202, broadly defining national defense. But no changes material here were made in Section 1 of S. 2; Section 6 of the Act had always been in the Senate bill; and that bill contained no definition comparable to Section 1202 of H. R. 291. In short, so far.

<sup>&</sup>lt;sup>14</sup> Mr. Webb said (55 Cong. Rec. 3131):

<sup>&</sup>quot;Mr. Speaker, the managers of the conference on the part of the House have tried to perform their duty with respect to this difficult bill conscient usly and effectively, and, generally speaking, I may say that the bill presented to you today is practically the bill as it passed the House. The only changes that have been made worth mentioning are in the espionage section proper, and there we agreed as to the particular designation of what matters should not be entered upon or flown over, instead of the "national defense" as a general description

as material here, the House simply accepted the Senate version without significant change.

The statement of the House managers, then, on its face reflects a misunderstanding of Section 1 of H. R. 291 and explains the adoption by the conferees of S. 2 in terms which have no relation to the Senate's action. Under these circumstances, it is doubtful that the statement should be taken as reflecting the views of the House, and it is quite plain that it should not be thought to represent the understanding of the Senate. For the Senate, as we have shown (supra, pp. 111–121), viewed the team "national defense" as used in S. 8148 and S. 2 as broader than the places enumerated in Section 1 (a), and no material change was made from these bills by the Conference Committee.

Finally it may be not d that even if one were to accept the statement of the House managers as the ultimate touchstone of the Congressional intent, it is doubtful that petitioners could escape the provisions of Section 2 (a). The managers said (55 Cong. Rec. 3130):

Section 2 of the House bill made the person guilty for doing the things enumerated therein "with intent or knowledge, or reason to believe that it is to be used to the injury of the United States." Under section 2 (a) as agreed upon, this provision is made to read, "with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation."

Section 2 of H. R. 291, as does Section 2 (a) of the Act, forbade communication of information "relating to the national defense" to representatives of a foreign government. But H. R. 291 contained no enumeration of places and things comparable to Section 1 (a) of the Act, so that it would be impossible to argue that the term "national defense" was limited in H. R. 291 to that particularization. Yet the House managers clearly indicate that Section 2 (a) differs from Section 2 of H. R. 291 only in the intent required.

In summary, the legislative history of the Espionage Act in the Senate would indicate that our construction of the Act is correct; the statement of the House managers would indicate that petitioners are correct as to Section 1 (b) and would suggest that we are correct as to Section 2 (a). Under these circumstances, it would seem plain enough that the legislative history is too confused to warrant departure from the plain terms of the Act. As this Court said in Federal Communications Commission v. Columbia Broadcast ing System, Nos. 39-40, this Term:

What was said in Committee Reports and some remarks by the proponent of the measure in the Senate are sufficiently ambiguous, insofar as this narrow issue is concerned, to

<sup>18</sup> In the House and in the Senate the debate was directed chiefly at the censorship provisions of the bills, which were finally eliminated before enactment. The numerous objec-

invite mutually destructive dialectic but not strong enough either to strengthen or weaken the force of what Congress has enacted. \* \* \*

We do not urge, because the language of the statute is plain, that the Court should not look at the legislative history. See *United States* v. *American Trucking Ass'ns*, 310 U. S. 534, 543–544; *United States* v. *Dickerson*, 310 U. S. 554, 561–562. But assuredly, the plain meaning of the statutory language should not be warped to conform with one of the two contradictory sets of inferences which may be drawn from the legislative history when it is equally compatible with the other group of inferences.

4. Subsequent Legislation.—The intention of Congress when it enacted the Espionage Act of 1917 is not illumined by any subsequent legislation. The Act of January 12, 1938 (c. 2, 52 Stat. 3, 50 U. S. C., Supp. V, Sec. 45) provides that, whenever,

tions to the breadth of "national defense" as used in those provisions, which contained no requirement of scienter, have no application here. Mr. La Guardia, for example, specifically distinguished between that section and the remainder of the bill (55 Cong. Rec. 1700), as did Mr. Walsh (55 Cong. Rec. 1601). Mr. Graham likewise stated: "But the Committee has carefully guarded innocent people who might communicate, who might obtain a photograph of some public work connected with the defense of the country, from being held liable for a criminal act, because the Government must prove affirmatively " that the person obtaining it had a guilty purpose, to wit, to injure the United States. Now, that applies to the first two sections" (55 Cong. Rec. 1717-1718, 1756).

in the interests of national defense, the President shall—

define certain vital military and naval installations or equipment as requiring protection against the general dissemination or information relative thereto,

it shall be unlawful to take pictures or other graphic representations of such installations or equipment without the permission of the commanding officer. It also requires such pictures and representations to be submitted to censorship before publication. A letter from the War and Navy Departments to the Senate Committee on Military Affairs, with respect to this bill, states (S. Rep. 108, 75th Cong. 2d Sess.) that the purpose of the bill is to—

permit more effective control of the activities of free-lance motion-picture and still-picture operators in vital military and naval installations, where the intent of the photographer is not necessarily so flagrant as that contemplated under section I, Public, No. 24, Sixty-fifth Congress, "Espionage Act."

It is plain enough that the War and Navy Departments recommended the legislation simply to permit control of photographers who had no guilty intention to injure the United States or aid a foreign nation. The House Committee report is less explicit, but seems to agree on the bill's purpose."

<sup>16</sup> It reported (H. Rep. 1650, 75th Cong., 2d Sess.):

<sup>&</sup>quot;The Committee is of the opinion that this measure is necessary to prevent important facts regarding our national

The Chairman of the Military Affairs Committee, on the floor of the House, offered a different explanation, but it does not aid petitioners.<sup>17</sup>

The Act of March 28, 1940 (Pub., No. 443, 76th Cong.), increases the penalties for violation of the Espionage Act but does not change its substantive provisions.

### C. THE LEGISLATIVE PURPOSE

It needs but a word to demonstrate that petitioners' construction would frustrate or seriously impair the accomplishment of the Congressional purpose. This Court has often given effect to the "presumption against a construction which would render a statute ineffective or inefficient." Bird v. United States, 187 U. S. 118, 124; United States v. Powers, 307 U. S. 214, 217. There is at least an equal reason to do so here.

The revision of the Defense Secrets Act of 1911 was proposed because that Act was "incomplete and defective" (Report of Attorney General for

defense installations from falling into the possession of persons who, through ignorance of their significance, or hostile intent, would permit them to be used to the detriment of the United States."

<sup>&</sup>lt;sup>17</sup> In response to questions regarding the necessity for this legislation, he explained that the purpose of the bill was to extend the law to territorial possessions outside the United States and to provide penalties not imposed under existing legislation. <sup>18</sup> Cong. Rec. 70–72. In both respects, it would seem, he was mistaken.

The Senate adopted the bill without debate. 83 Cong. Rec. 75; 81 Cong. Rec. 1133, 1396, 1534.

1916, p. 19:) There can be no doubt that Congress in 1917 intended to cover the espionage field completely. Cf. Pierce v. United States, 252 U. S. 239, 252. Yet an army rifle, to choose one of countless examples, is not included among the items specified in Section 1 (a). It is not a "place" that someone can go upon, enter, or fly over. Yet no one would doubt that the plans of such a rifle would be one of the most valuable of defense secrets, or that the language of Section 1 (b), referring to an "instrument connected with the national defense," is unequivocally appropriate to prevent obtaining secret information about it. Information concerning the "movement, numbers, description, condition, or disposition of any of the armed forces \* \* \* or 'war materials" or "plans or conduct, or supposed plans or conduct of any naval or military operations" is deemed so vital that gathering it for the enemy in time of war is made a capital offense by Section 2 (b) of the Act. But under the petitioners' construction all of this information could be betrayed with impunity so long as we were technically at peace, since they are not places enumerated or susceptible of enumeration in Section 1 (a).

Congress, as Senator Overman pointed out (supra, p. 46), could not make an intelligible specification of the thousands of items and activities which comprise the national defense. Even if the list were somehow made complete at the date of enactment, the progress of military and

naval science would soon make it obsolete. Indeed, the secrets of greatest value, because they related to the newest military inventions, would be those most likely to fall outside any detailed specification which Congress might choose to adopt. This very difficulty was the occasion for the revision of the Defense Secrets Act of 1911, resulting in the Espionage Act of 1917, and it was in the minds of legislators who were responsible for the passage of the latter act. (54 Cong. Rec. 3601, 55 Cong. Rec. 1606.)

### D. LIMITATIONS UPON THE STATUTE

Sections 1 (b) and 2 (a) of the Espionage Act, then, punish anyone who, with intent to injure the United States or aid a foreign nation, obtains and discloses to a representative of a foreign nation information connected with or relating to "the national defense."

It may be appropriate here to point out that the statute does not punish the obtaining and disclosure of all information which might be thought to bear on the manifold activities, military and industrial, which comprise the national defense. Instead, the Act contains by its terms or by its plain implications three limitations upon its application: (1) The information must be obtained or revealed with the intent or reason to believe that it will be used to the injury of the United States or to the advantage of a foreign nation. (2) The information must have a military significance. (3) It must be secret or confidential information, either be-

cause it is derived from confidential sources or because it presents information outside the public domain which plainly should not be placed at foreign disposal. The first of these limitations is express; the second and third deserve a word of comment.

Section 1 (b) punishes obtaining—

any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; \* \*

Section 2 (a) punishes the disclosure to a representative of a foreign nation of—

any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, \*\*\*

Implicit in these enumerations is a connecting thread of similarity. They refer to matters of military or naval significance. Moreover, the Act, as its title shows, is directed not af curiosity but at "espionage." The documents, plans, and information are matters which can be secured only if one "copies, takes, makes, or obtains" (Sec. 1 (b)), and are disclosed only if one "communicates, delivers, or transmits" them to a representative of a foreign government (Sec. 2 (a)). The statute, then, is cast in terms which assumes that the protected information is not of common knowledge,

and lies outside the public domain. In a broad sense, it protects military information which is secret or confidential. Its secret nature may arise from the fact that it is held confidential by the Government, or from the fact that through independent investigations the offender has secretly accumulated data which has a military importance such that it should not be placed at the disposal of a foreign nation. The Act, then, quite plainly is directed at espionage, not at innocence.<sup>16</sup>

This construction is required also by the legislative history of the Act. Senator Cummins, who bore the burden of the opposition, pointed out that the bill did not in terms refer to "secrets" or to "spies." 54 Cong. Rec. 3489. But, in discussing and explaining Sec. 1, Senator Overman, in charge of the bill, repeatedly stated that it was intended to cover only "secrets" of our national defense and to punish spies. E. g., 54 Cong. Rec. 3489, 3586. He frequently referred to military places, or to places in which military plans, codes, and signals are kept. E. g., 54 Cong. Rec. 3600. The House debates disclose the same purpose.

<sup>18</sup> Thus the newspaper correspondent whose dispatches relate military but not confidential information does not fall afoul of the Act. And the army officer who, on direction of his superiors, shows the purchasing officers of a foreign nation a new weapon is similarly protected: the information is not secret as against those to whom disclosure is authorized.

<sup>&</sup>lt;sup>19</sup> It was argued that the prescribed intent in Section 1 should be confined to military injury (55 Cong. Rec. 1591, 1759). Mr. Webb replied that "the courts would proba-

In short, the phrase "information connected with the national defense" as used in the context of the Espionage Act means, broadly, secret or confidential information which has its primary significance in relation to the possible armed conflicts in which this nation might be engaged. The protected information is readily recognized from the common experience and knowledge of the average. man. Like all tests based upon such experience, its application to a given state of facts sometimes may involve the use of judgment. But that judgment seems plainly to be no more difficult than the inevitable difficulty, common to almost all statutes, of drawing a border-line at the periphery. See Nash v. United States, 229 U. S. 373, 377; United States v. Wurzbach, 280 U. S. 396, 399. Finally, all danger of entrapping the innocent is removed

bly construe" Section 1 so as to relate only to military offenses (55 Cong. Rec. 1591). Again when the word "military" was sought to be inserted before "injury", Mr. Webb stated that Section 1 is as "nearly confined to that as it is humanly possible to make it" (55 Cong. Rec. 1759). And, when it was urged that Section 3 covered even a plan of an ordinary building, Mr. Webb replied: "I would say to my friend that my interpretation of the provision is that it would not cover the building of a house somewhere in a fort. It would be the fort itself, the things that are vitally connected with the national defense, a book or a photograph which would give the enemy the tunnels, the location of the guns, and things like that, and not the building of a house by a poor mechanic somewhere \* \* we ought to make it imperative on the officers of this Government to preserve with a scrupulous care every one of these profound and important national secrets involving our military and national existence" (55 Cong. Rec. 1762).

by the requirement that the information be obtained or revealed with the intent or reason to believe that it will be used to the injury of the United States or to the advantage of a foreign nation.

# E. THE REVEALED INFORMATION RELATED TO THE NATIONAL DEFENSE

Petitioners urge that the revealed information as a matter of law was too innocuous to warrant conviction; this point we discuss below (pp. 92-98). But, as we read their brief (see pp. 15, 17), they do not argue that the information Salich obtained in the course of his investigatory duties and from the files of the Naval Intelligence was unrelated to, or was not connected with, "the national defense," if the term be understood as we urge it should be construed.

This Court, in any event, will not review the evidence to determine if it supports the verdict of the jury (supra, p. 25). If it were to do so, it would find that the revealed information quite plainly was connected with the national defense, as so defined.

The preceding section of this brief suggested that the term is not to be read in its broadest connotations, but is to be limited to secret or confidential information of military significance. The petitioners are not aided by this implied limitation upon the scope of the statutory prohibition.

Salich gave Gorin information, which he knew to be highly confidential, drawn from some 53 Naval Intelligence reports; the information presented a full picture of the work of the Naval Intelligence office at San Pedro so far as it was directed toward protection against Japanese espionage. The information disclosed the names and activities of suspected Japanese spies, and discussed rumored Japanese military or sabotage inventions. Gorin was thus given both information as to Japanese espionage and a rather good picture of our counter-espionage activities (supra, pp. 10-11, 26-28).20

Espionage and counter-espionage obviously lie at the heart of our national defense. It is self-evident that Japanese espionage, and American counter-espionage, are connected with or related to "the national defense" under an ordinary or usual interpretation of those words.

## III

SECTIONS 1 (b) AND 2 (a) ARE NOT UNCONSTITUTIONAL BECAUSE THEY PUNISH THE DISCLOSURE OF INFORMA-TION RELATING TO THE NATIONAL DEFENSE

We have urged (1) that petitioners were convicted under their own theory of Sections 1 (b) and

<sup>&</sup>lt;sup>20</sup> Petitioners sought to introduce into evidence an article from the April 7, 1938, issue of *Ken* magazine (R, 485-513). This article, together with two in later issues of the magazine (April 6, 1939, and July 27, 1939), related matter more or less equivalent to the information contained in the reports revealed by Salich, and other material of the same general nature. But much of the information given Gorin was never made a part of the public domain in any manner (R. 717, 734).

2 (a) of the Espionage Act, and (2) that, in any event, those sections punish the disclosure of information connected with the "national defense," without limitation to the particular places specified in Section 1 (a). If we are wrong on the first argument, and right on the second, the constitutionality of Sections 1 (b) and 2 (a), as thus construed, is attacked by petitioners on the ground that the term "national defense" is unduly vague and indefinite (Br. 38-49). We assume that this argument is open to both petitioners, but deny their conclusion.

#### A. THE RULE AGAINST INDEFINITENESS

It is clear enough, at least at this time, that a statute may be unconstitutional because it speaks in language too indefinite to be understood. Whatever the specific legal basis for this limita-

Petitioner Gorin raised his constitutional objections at every necessary point (R. 13-14, 15-16, 17-18, 69-70, 459, 631). Petitioner Salich did not raise the constitutional objection at any point in the trial court or in his notice of appeal or assignments of error to the court below. But we doubt that this should prevent him from raising the legal question here. The court below passed on the question with respect to both petitioners. The Government's case in the evidence was not affected. Cf. Mosbacher v. United States, No. 128, this Term, certiorari granted and judgment reversed, November 18, 1940, on a ground not urged below. Finally, it would seem unnecessarily harsh to convict Salich under a statute held unconstitutional as to Gorin. Cf. Patterson v. Alabama, 294 U. S. 600.

<sup>\*</sup> It was not so clear a generation ago. In *United States* v. *Brewer*, 139 U. S. 278, 288 (1891), the Court was content with the simpler proposition that if an act was too vague for

tion, its roots reach deep into cherished soil—the legislature must deal fairly with the people. It cannot exact "obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all." Champlin Refining Co. v. Commission, 286 U. S. 210, 243. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." Lanzetta v. New Jersey, 306 U. S. 451, 453. A "statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." Connally v. General Construction Co., 269 U. S. 385, 391.

<sup>3</sup> The source of the constitutional prohibition is occasionally found in the Sixth Amendment, requiring that the accused "be informed of the nature and cause of the accusation." United States v. Cohen Grocery Co., 255 U. S. 81,

a man to know whether or not he violated its prohibition, then he was not within its terms. And in Lloyd v. Dollison, 194 U.S. 445, 450 (1904), Mr. Justice McKenna, writing for a unanimous Court, indicated a real doubt that the due process clause carried any prohibition against indefiniteness: "if a case can exist in which the kind or degree of power given by a State to its tribunals may become an element of due process under the Fourteenth Amendment, it would have to be a more extreme example than the Ohio statute. \* \* \* Besides, would it not be strange to hold that a statute unaccompanied by a glossary of its terms leaves unfulfilled the legislative power?" Apparently the first explicit recognition by this Court of a constitutional limitation was in Waters-Pierce Oil Co, v. Texas (No. 1), 212 U. S. 86, 108-111 (1909). Not until International Harvester Co. v. Kentucky, 234 U. S. 216 (1914), did the Court hold a statute invalid on this ground.

None would quarrel with these general precepts. On the other hand, it is far from easy to give them definite content or specific application. Their inherent vagueness has not been removed by any crystallized or precisely articulated course of decision in applying these criteria. The court below not inaccurately commented that these general rules "are subject to the same mischief which they seek to control, and do not aid in the solution of the question" (R. 728). It then summarized nine cases in which this Court had sustained statutes against complaints that they were too indefinite and six cases in which the statute had been condemned, and concluded that "no workable statement of differentiation is apparent from these decisions" (R. 728-731).

We agree with the court below only in part. The ultimate inquiry is simply whether the statutes offend seriously against accepted notions of fair dealing. That inquiry by its nature cannot be answered in a sentence, nor by isolating the crucial phrase of the statute and measuring its specificity against the calibration found in the precedents.

edi ikuvenikoones (kusukaluikus). Tasti etki of viinet opuulik annon onto ko anno lokkosione siin ta keidunki sido bekend an 1878 tii deg ja oo waxaasta Jaay o yonik deskoone

<sup>89;</sup> Yu Cong Eng v. Trinidad, 271 U. S. 500, 518. It is more frequently, and perhaps more persuasively, placed upon the due process clause. E. g. Lanzetta v. New Jersey, 306 U. S. 451, 453; Connally v. General Construction Co., 269 U. S. 385, 391; Cline v. Frink Dairy Co., 274 U. S. 445, 458.

4 Cf. Note, Indefinite Criteria of Definiteness in Statutes, 45 Harv. Law Rev. 160.

Unless one were to set up multiple equations of prodigious complexity, it is folly to attempt to "reconcile" the thirty-odd decisions of this Court which have considered the question. Each is a value judgment, based upon the existence and weight of numerous factors. No analysis of the precedents, we believe, can be fruitful except that which attempts to isolate those factors and to apply them to the issue at hand. Some factors, such as the generality of the language or the requirement of scienter, will be found to be more important than others, but, as the court below discovered, the results are wildly confused if interpreted in terms so rudimentary as the generality of the statutory language alone.

The succeeding sections of this point attempt to isolate the relevant factors and to apply them to the case at bar. When this is done, we submit that it is abundantly clear, upon reason and precedent alike, that Sections 1 (b) and 2 (a) of the Espionage Act are constitutional.

# B. PETITIONERS CAN RAISE ONLY THEIR OWN INSUBSTANTIAL DOUBTS

At the outset, the Court seems to be faced with a preliminary matter: the standing of petitioners to complain of the indefiniteness of Sections 1 (b) and 2 (a) of the Espionage Act as it covers the activities of people generally. This question, in contrast to the constitutionality of the provisions on

229 U. S. 818, 311-376; Communication v. Light. 246 U. S. 348; Claiked Visites v. Eleken Gregory Co., 256 U. S. 81; Long their merits, is doubtful. But, since the scope of the inquiry differs markedly according as it is directed to the statute generally or to its application to petitioners, we prefer to face it squarely.

1. None Has Standing to Complain of Indefiniteness Except as the Statute is Applied to Him .-The question is clear on principle. A statute may be invalid as applied to one set of facts and valid as applied to another. St. Louis, Iron Mountain & Southern Ry. Co. v. Wynne, 224 U. S. 354; Kansas City Southern Ry. Co. v. Anderson, 233 U. S. 325, Poindexter v. Greenhow, 114 U. S. 270, 295. Accordingly, the rule has long been settled that a litigant can challenge the validity of an act only when it is applied to his own disadvantage. Yazoo & Mississippi Ry. Co. v. Jackson Vinegar Co., 226 U. S. 217, 219; Premier-Pabst Sales Co. v. Grosscup, 298 U. S. 226; Kuehner v. Irving Trust Co., 299 U. S. 445, 455; Bourjois, Inc. v. Chapman, 301 U. S. 183. We submit that this established principle of constitutional litigation is equally applicable in the case of a statute challenged as too indefinite.

It is true that in the great majority of the cases in which this Court has considered the constitutionality of statutes said to be too indefinite, it has decided the question in the abstract and without reference to the facts of the specific case before it.

<sup>\*</sup>See Lloyd v. Dollison, 194 U. S. 445, 450; Waters-Pierce Oil Co. v. Texas (No. 1), 212 U. S. 86; Nash v. United States, 229 U. S. 878, 377-378; Omaechevarria v. Idaho, 246 U. S. 348; United States v. Cohen Grocery Co., 255 U. S. 81; Levy

But this is not an undeviating or settled rule, for in several cases the Court has limited the inquiry to the uncertainty or doubt to which the particular assailant could have been subjected.

In Fox v. Washington, 236 U. S. 273, the Court did not inquire into all the possible uncertainties latent in the statute forbidding publication of matter which "shall tend to encourage or advocate disrespect for law." Instead, it said (p. 277):

If the statute should be construed as going no farther than it is necessary to go in order to bring the defendant within it, there is no trouble with a for want of definiteness.

In Miller v. Strahl, 239 U. S. 426, the Court similarly refused to examine the borderline cases arising under a statute requiring innkeepers, in case of fire," "to do all in their power" to save their guests. It said (pp. 432, 433):

Leasing Co. v. Siegel, 258 U. S. 242, 249-250; Small Co. v. American Sugar Refining Co., 267 U. S. 233; Connally v. General Construction Co., 269 U. S. 385; Yu Cong Eng v. Trinidad, 271 U. S. 500, 518-520; United States v. Alford, 274 U. S. 264, 267; Whitney v. California, 274 U. S. 357, 369-370; Cline v. Frink Dairy Co., 274 U. S. 445; Stromberg v. California, 283 U. S. 359; Smith v. Cahoon, 283 U. S. 533, 564-565; Champlin Refining Co. v. Corporation Commission, 283 U. S. 210; Sproles v. Binford, 286 U. S. 374; United States v. Shreveport Grain & Elevator Co., 287 U. S. 77, 81-82; Old Dearborn Co. v. Seagram Corp., 299 U. S. 183, 196; Kay v. United States, 308 U. S. 1, 9; Lanzetta v. New Jersey, 306 U. S. 451, 453; Minnesota v. Probate Court, 309 U. S. 270, 274.

\* \* we need not consider whether the statute exacts from him and his employes heroic conduct \* \* \*. It is entirely aside from the questions in the case and the requirements of the statute to consider the dismays and perils of an extreme situation, and what then might be expected of courage or excused to timidity.

Again, in United States v. Wurzbach, 280 U. S. 396, a member of the House of Representatives was indicted under the Federal Corrupt Practices Act. The Court did not consider his attack based upon the indefiniteness of its prohibitions, which applied to "any Senator or Representative \* \* or any person receiving any salary \* from money derived from the Treasury of the United States." It said (p. 399):

There is no doubt that the words include representatives, and if there is any difficulty, which we are far from intimating, it will be time enough to consider it when raised by someone whom it concerns.

In International Harvester Co. v. Kentucky, 234 U.S. 216, 223, the Court recognized the applicability of the doctrine but considered that it had an extreme case before it. This, too, was the view adopted in Herndon v. Lowry, 301 U.S. 242, 261–264. And in one case the Court has in the large directed its discussion to the specific facts before it, without, however, noting that the result might be different in

other cases. Finally, it is to be noted that the older approach to the question, as adopted in *United States* v. *Brewer*, 139 U.S. 278, was the simpler rule that a man was not covered by an act insufficiently explicit. This would seem automatically to restrict the inquiry to the doubts and uncertainties of the particular assailant before the Court.

It is, we recognize, not easy to reconcile these cases with the more general practice of the Court. Several lines of inquiry, however, offer suggestive aid.

In the first place, in not one of the 21 cases in which the Court treated the statute in general terms, apart from the status of the particular assailant, was it urged in support of the statute that the assailant could raise only his own doubts. This element of practical litigation in itself serves to minimize the weight of the usual practice of this Court.

In the second place, in many cases it is highly improbable that the particular assailant would have any less doubt as to the application of the statute than would others. In other words, almost everyone affected by some statutes is of necessity a border-line case. If this test be applied to the cases in which

<sup>\*</sup>Hygrade Provision Co. v. Sherman, 266 U. S. 497, 501-503; cf. Bandini Co. v. Superior Court, 284 U. S. 8, 18.

Term, 1937, the Government assumed (Br. 41), but did not urge, that petitioner could raise only her own doubts.

The contrast between "ambiguous" and "indefinite" statutes may be helpful here. If there is doubt as to which of two or more specific meanings was intended, everyone is

the Court has looked at the challenged statute in its abstract operation, only eight cases seem to us to represent decisions cast in unduly general terms for cases where the uncertainty under the statute would seem to vary considerably between particular applications.

Hinally, a ground for demarcation may be found in the field of conduct regulated by the statute. The vice of an indefinite statute may be less the unexpected punishment inflicted upon the particular assailant than its in terrorem interference with the conduct of many who refrain from innocent activity for fear of the reach of the indefinite statute. In this view, the scope of the inquiry perhaps should turn on the general nature of the field

assailed by the same doubt, and there would be no reason to limit the standing to attack the statute. See, e. g., "current rate of wages" (Connally v. General Construction Co., 269 U. S. 385); peaceful or violent "opposition" to government (Stromberg v. California, 283 U. S. 359); which public carrier provisions were constitutionally applicable to private carriers (Smith v. Cahoon, 283 U. S. 553). But if the doubt is simply one of degree, as to how far the statute reaches, the doubts of peripheral persons should not aid those clearly included.

<sup>\*</sup>Lloyd v. Dollison, Omaechevarria v. Idaho, Whitney v. California, Sproles v. Binford, United States v. Shreveport Grain & Elevator Co., Kay v. United States, Lanzetta v. New Jersey, Minnesota v. Probate Court, all supra, note 5. This classification excludes the various cases dealing with unreasonable prices, etc., on the ground that it is improbable, under the force of ordinary economic conditions, that the assailant could be sure that his prices were unreasonable, etc.

of activity to which the statute is or might be applicable. If fields of conduct probably considered by the legislature to be socially desirable or unobjectionable were subjected to regulation or interference, the Court might well feel that adequate protection of those not before the Court required a general inquiry into the definiteness of the statute; if the conduct subjected to doubt by the statute were not such that the legislature could be supposed to intend to encourage it, the inquiry might appropriately be limited to the doubts of the particular assailant. Measured by this test, only two cases seem to have adopted too broad an approach.<sup>10</sup>

No one of these factors can be said to be conclusive under the authorities. But in combination they point to a rather clear result. Where the point has been raised, where the doubts as to the applicability of the statute may vary markedly between individual cases; and where no activity which the legislature would consider innocent or desirable is subjected to fear of illegality, the Court has never made a broad inquiry into the doubt's which persons not before the Court might have as to the applicability of the statute.

<sup>10</sup> Lloyd v. Dollison, Lanzetta v. New Jersey, both supra note 5. This classification excludes the statutes interfering with free speech, on the ground that the desirability of free discussion overrides the undesirability of verbal or written attacks upon our laws and form of government. See Herndon v. Lowry, 301 U. S. 242, 264.

In the present case, we insist that petitioners. cannot raise the doubts which others might feel as to the applicability of Sections 1 (b) and 2 (a) of the Espionage Act (cf. Br. 17-18, 59). Those provisions will obviously apply with marked clarity to some, whatever might be the peripheral doubts, and if indefinite they serve to discourage only the highly undesirable activity of revealing information about our national defense which is to be used to the injury of the United States or the advantage of a foreign power.

2. Petitioners Had No Substantial Doubts.—The Court in this case is not faced with the difficult issues suggested by petitioners (Br. 17-18). There is no need to envisage a hapless correspondent sending a despatch to his press which could arguably disclose information connected with the "national defense," or the penalties which might be visited upon a critical statesman who complained of inadequacies in our military or naval establishments." The activities of the petitioners were such that they could

in point of fact, of course, such instances would in no circumstances be included within the reach of Sections 1 (b) and 2 (a), which require that the information be obtained or revealed "with intent or reason to believe that the information " is to be used to the injury of the United States or to the advantage of a foreign nation," and since it is doubtful that the innocent would either be able of would care to disclose military information which should be held as confidential:

not reasonably have believed that the revealed information was innocent or wholly unrelated to the

national defense:

Salich was employed as an investigator by the Naval Intelligence. An important part of his work was the detection of Japanese espionage. Substantially all of this information he turned over to Gorin as the representative of the U. S. S. R. For this he received money from Gorin. The negotiations and the disclosure of secret naval information was probably carried on without any knowledge of Salich's superiors, who certainly did not know that he was being paid for his disclosures (See supra, pp. 8-14).

This is not the type of conduct which permits either participant to protest punishment under Sections 1 (b) and 2 (a) of the Espionage Act. No member of a military intelligence service can sell information, which has been gathered for the intelligence service, to a foreign nation without being fully aware that it would be at least a very close question whether the information is connected with the "national defense." By the same token the agent of the foreign nation which purchases the information is equally aware of his dangers under the Espionage Act.

Salich, it is true, testified that he was familiar with the Espionage Act and that he did not believe

that his actions constituted a violation of the Act (supra, p. 11). But, quite evidently, a statute cannot be held invalid simply because one who violates it has erroneously estimated that he probably could escape the letter of the law. This Court in United States v. Wurzbach, 280 U. S. 396, answered the precise contention. There the defendant objected that he could not be sure what was included within the proscribed "political purposes." The Court replied (p. 399):

But we imagine that no one not in search of trouble would feel any [objection]. Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. Nash v. United States, 229 U.S. 373.

Equally here, petitioners cannot convict the statute of invalidity because Salich erroneously considered that he probably could avoid its application.

C. SECTIONS 1 (b) AND 2 (a) OF THE ESPIONAGE ACT ARE NOT UNCONSTITUTIONALLY INDEFINITE

Even if petitioners have standing to launch a general attack upon Sections 1 (b) and 2 (a) of the Espionage Act, that attack must fail. We submit that those provisions, when measured by the criteria of validity which this Court has recognized, meet every requirement of the Constitution.

1. Generality of the Language.—The court below assumed in its opinion that the only relevant consideration was the generality or indefiniteness of the statutory language (R. 728-731); petitioners seem to proceed upon the same premise (Br. 38-49). In one sense the generality of the language is all-important, for if the provisions are specific and detailed no question of unconstitutional indefiniteness can arise. But, if it be established that the term "national defense" is indefinite, this is simply the starting point and is not the terminal of the inquiry. The statutes which have been upheld by this Court, equally with those which have been condemned, have used indefinite language. The reason why some are valid and others invalid must lie in other fields.

It may be, of course, that a legislature could choose its language so clumsily that it conveyed no meaning whatever. Probably a statute of this nature would be invalid simply because of the generality of its language. But none of the cases which have reached this Court have been of this nature. The language of the sustained statutes, by any ordinary or comprehensible standard, have been no more explicit than those condemned. This is amply demonstrated by the opinion below (R. 728-731); we shall not labor the point, but have simply collected the cases in the margin."

<sup>&</sup>lt;sup>12</sup> The following 21 cases sustained the quoted statutory language: *Lloyd* v. *Dollison*, 194 U. S. 445, 450 (liquor restrictions varying according to sale at "wholesale" or "re-

The term "national defense," at least when stripped from its context in the Espionage Act (see *United States* v. *Alford*, 274 U. S. 264, 267), is a generic term which does not have precise contours. Some things, such as battleships, are clearly

tail"); Waters-Pierce Oil Co. v. Texas (No. 1), 212 U. S. 86, 108-111 (contracts "reasonably calculated" or which "tend" to fix prices); Nash v. United States, 229 U. S. 373, 376-378 (unreasonable or undue restraints of trade); Standard Oil Co. v. United States, 221 U. S. 1, 69 (same); Fox v. Washington, 236 U. S. 273, 277-278 ("tend to encourage or advocate, disrespect for law"); Miller v. Strahl, 239 U. S. 426, 432 434 (innkeepers to do "all in their power to save" guests in case of fire); Omaechevarria v. Idaho, 246 U. S. 343, 345, 348 ("any cattle range previously \* \* \* or \* \* usually occupied by any cattle grower"); Levy Leasing Co. v. Siegel, 258 U. S. 242, 249-250 \( \Lambda \) unjust and unreasonable" rent, under an "oppressive agreement"); Hygrade Provision Co. v. Sherman, 266 U.S. 497, 501-503 (meat represented to be "kosher"); Miller v. Oregon, 273 U. S. 657 (dangerous rate of speed; see 274 U.S. at 464-465); United States A. Alford, 274 U. S. 264, 267 (building fires "near" any forest or inflammable material); Whitney v. California, 274 U. S. 357, 360, 368-369 (membership in organization "advocating" or "aiding and abetting \* \* \* methods of terrorism as a means of \* \* \* effecting any political change"); Miller v. Schoene, 276 U. S. 272, 277, 278, 281 (cedar trees investigated on request of "freeholders" and condemned if dangerous to an "apple orchard in said locality"); United States v. Wurzbach, 280 U. S. 396, 399 (receiving contributions for "any political purpose whatever"); Bandini Co. v. Superior Court, 284 U. S. 8. 18 ("unreasonable waste" of gas, construed to mean escape of gas beyond that necessary to lift oil to surface); Sproles v. Binford, 286 U.S. 374, 393 ("shortest practicable route"); United States v. Shreveport Grain & Elevator Co., 287 U. S. 77, 81-82 ("reasonable variations" in weight or measure); Old Dearborn Co. v. Seagram Corp., 299 U. S. 183, 196 (resale price contracts for branded products

included; other things, such as perfume factories, are excluded. Others might be doubtful. In this

in "fair and open competition" with other brands); Kay v. United States, 303 U.S. 1, 8-9 ("ordinary fees" for services actually rendered"); Neblett v. Carpenter, 305 U.S. 297, 302-303 ("mutualize or reinsure the business of" an insurance company "or enter into rehabilitation agreements"); Minnesota v. Probate Court, 309 U.S. 270, 274 (habitual course of sexual misconduct showing uncontrollable im-

pulses).

The following 13 cases held the quoted statutory language unconstitutionally indefinite: International Harvester Co. v. Kentucky, 234 U. S. 216, 221-224 (raising prices above "market value under fair competition, and under normal market conditions"); Collins v. Kentucky, 234 U. S. 634 (same); United States v. Cohen Grocery Co., 255 U. S. 81, 89-93 ("unjust or unreasonable rate or charge in . . . necessaries"): Weeds, Inc., v. United dealing in States, 255 U. S. 109 (exacting "excessive prices for any necessaries"); Small Co. v. American Sugar Ref. Co., 267 U. S. 233, 237-242 (same); Connally v. General Construction Co., 269 U. S. 385, 391-395 ("current rate of \* .\* wages in the locality"); Yu Cong Eng v. Trinidad, 271 U.S. 500, 517-522 (keeping such account books in English or Spanish as adapted to needs of taxing officers); Cline v. Frink Dairy Co., 274 U. S. 445 (trade combinations permitted when designed "to market at a reasonable profit those products which cannot otherwise be so marketed"); Stromberg v. California, 283 U. S. 359, 369 (displaying any "symbol or emblem of opposition to organized government"); Smith v. Cahoon, 283 U. S. 553, 564-565 (such provisions regulating common carriers as could constitutionally be applied to private carriers); Champlin Refining Co. v. Commission, 286 U.S. 210, 241-243 (production of oil in such a manner as to constitute "waste"); Herndon v. Lowry, 301 U. S. 242, 261-264 (distribution of pamphlets intended at any time in the future to lead to resistance by force to law); Lanzetta v. New Jersey, 306 U. S. 451 ("known to be a member of any gang").

sense, then, the term "national defense" is indefinite. Whether it is unconstitutional because of its indefiniteness is a wholly different inquiry, which must be answered in terms of the numerous criteria established by the decisions of this Court.

2.-General Considerations.—The inquiry into the validity of Sections 1 (b) and 2 (a) of the Espionage Act is aided by several canons of constitutional adjudication, which are not the less important because their teaching is cast in general terms.

- (a) The settled rule that a statute is presumed to be constitutional unless its invalidity is clearly shown is, of course, fully applicable when the ground of attack is that the statute is too indefinite. United States v. Cohen Grocery Co., 255 U. S. 81, 92-93. Here Congress paid heed to the constitutional question now raised (54 Cong. Rec. 3485-3486, 3586, 3588; 55 Cong. Rec. 1591). Its judgment is entitled to the usual respect.
- (b) It is not enough to show that there may be cases in which application of the statute is uncertain. Men ordinarily speak in words which lack a mechanical precision of denotation. There will be found around almost every statute an inevitable fringe of uncertainty and doubt. This periphery of indefiniteness may be more extensive in some

<sup>&</sup>lt;sup>13</sup> We carnot follow the reasoning of the opinion below, which said the supposedly contradictory lines of decision in this Court removed the presumption of constitutionality but left the assailant under the burden of proving a clear case (B-731).

cases than in others but its existence is ordinarily inescapable. "The law is full of instances where a man's fate depends upon his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." Nash v. United States, 229 U. S. 373, 377. "Whenever the law draws a line there will be cases very near each other on opposite sides." United States v. Wurzbach, 280 U. S. 396, 399. See also, Lloyd v. Dollison, 194 U. S. 445, 450; Miller v. Strahl, 239 U. S. 426, 434; Omaechevarria v. Idaho, 246 U. S. 343, 348; Hygrade Provision Co. v. Sherman, 266.U. S. 497, 502.

The following pages take up the specific criteria of validity which have been recognized by this Court and which are applicable to the case at bar."

<sup>14</sup> Several criteria which are inapplicable to the case at bar may be mentioned, in order to present a rounded picture. (1) An otherwise unduly indefinite statute will not be held invalid if it receives an administrative or judicial refinement before its application. United States v. Shreveport Grain & Elevator Co., 287 U. S. 77, 81-82; Miller v. Schoene, 276 U. S. 272, 281; Kay v. United States, 303 U. S. 1, 9; Neblett v. Carpenter, 305 U. S. 297, 302-303; see Smith v. Cahoon, 283 U. S. 553, 565; Champlin Refining Co. v. Commission, 283 U.S. 210, 242; Small Co. v. American Sugar Ref. Co., 267 U. S. 233, 239; cf. Bandini Co. v. Superior Court, 284 U. S. 8, 18; compare Old Dearborn Co. v. Seagram Corp., 299 U.S. 183, 196. (2) An indefinite statute which uses common law terminology receives into it the precision of prior case-by-case decisions. Nash v. United States, 229 U. S. 373, 377; Standard Oil Co. v. United States, 221 U. S. 1, 69; see International Harvester Co. v. Kentucky, 234 U.S. 216, 228; Connally v. General Construction Co., 269 U. S.

3. The Penalty Applies Only If There Be An Intent to Disclose Military Secrets.—Sections 1 (b) and 2 (a) of the Espionage Act punish one who obtains and reveals information relating to the national defense only if this be done "with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation." The information, moreover, must be of military significance and, broadly speaking, of a secret or confidential nature. These limitations, we submit, of themselves serve to repel any attack upon the constitutionality of those sections.

Sections 1 (b) and 2 (a) cannot be applied to punish surprised innocence. The newspaper correspondents, the critical statesmen, the political commentators, the students of military affairs, who obtain and reveal information regarding the national defense are automatically excluded from the reach of those provisions. For they apply only to those who obtain and reveal confidential or

<sup>385, 391;</sup> Cline v. Frink Dairy Co., 274 U. S. 445, 459-461; Champlin Refining Co. v. Commission, 286 U. S. 210, 242; Herndon v. Lowry, 301 U. S. 242, 263. (3) The standards are probably less severe for civil than for criminal statutes, Levy Leasing Co. v. Siegel, 258 U. S. 242, 249-250; Cline v. Frink Dairy Co., 274 U. S. 445, 463-464; see Yu Cong Eng v. Trinidad, 271 U. S. 500, 518; compare Small Co. v. American Sugar Refining Co., 267 U. S. 233, 237-242. (4) An indefinite exemption from an acceptably specific general prohibition may perhaps be allowed greater to energy of Grain & Elevator Co., 287 U. S. 77, 81-82; compare Collins v. Kentucky, 234 U. S. 634; Cline v. Frink Dairy Co., 274-U. S. 445.

secret information, broadly defined, of a military nature, with a conscious desire, or with a reasonable expectation, of causing injury to the United States or advantage to a foreign nation. If this be the case, there can be no serious problem as to the scope of the term "national defense." In the first place, those who reveal such information with such an intention, or with reason to believe that it would cause such a result, cannot be heard to complain that they were not sure what was meant by "national defense." In the second place, information which is intended to be used to injure the United States or which should be expected to benefit a foreign nation, and is, broadly speaking, secret or confidential information of a military character, must by its nature lie well within the field of particulars which clearly and unmistakably is included in the generic term "national defense."

This Court has on several occasions noted that the requirement of scienter prevented an attack upon a statute because of its undue indefiniteness. It has, moreover, never held a statute invalid for indefiniteness when scienter was clearly required for its violation.

In Omaechevarria v. Idaho, 246 U. S. 343, 348, it held valid a statute forbidding sheep grazing "upon any range usually occupied by any cattle grower;" an alternative ground of decision was the statutory requirement of intent or criminal negligence, which removed any danger to sheep-

men. And in Hygrade Provision Co. v. Sherman, 266 U.S. 497, 501, the Court said:

in reaching a correct determination as to whether a given product is kosher, appellants are unduly apprehensive of the effect upon them and their business, of a wrong conclusion in that respect, since they are not required to act at their peril but only to exercise their judgment in good faith, in order to avoid coming into conflict with the statutes.

See, to the same effect, Commonwealth v. Reilly, 248 Mass. 1, 4-7, 142 N. E. 915, 918 (Mass. 1924); Usary v. State, 112 S. W. (2d) 7, 10-11 (Tenn. 1938).

Only one of the statutes held invalid because too indefinite (note 12, supra, p. 79) had any provision which suggested the necessity of scienter.

The accumulation of statutes held invalid in International Harvester Co. v. Kentucky, 234 U. S. 216, and Collins v. Kentucky, 234 U. S. 634, was construed by the state court to make unlawful any combination "for the purpose or with the effect of fixing a price that was greater or less than the real value of the article" (234 U. S. at 221). [Italics added.]

In Cline v. Frink Dairy Co., 274 U.S. 445, the condemned statute excepted from the antitrust laws combinations "the object and purposes of which are to conduct operations at a

States v. Cohen Grocery Co., 255 U. S. 81; Weeds, Inc. v. United States, 255 U. S. 109; Small Co. v. American Sugar Ref. Co., 267 U. S. 233. The statute as quoted in 255 U. S. at 86 reads as though intent were required. But the full text of the Section, as set out in 255 U. S. at 81-82, shows that intent was no part of the clauses under attack.

The statute condemned in Herndon v. Lowry, 301 U. S. 242, did not in terms require intent, but, as construed by the state court, it punished the attempt to incite insurrection, if force was contemplated by the inciter "at any time within which he might reasonably expect his influence to continue" (301 U. S. at 254-255). The statute as thus construed might be thought to require either (1) an intent to stimulate force and violence, or (2) an intent to utter words which "might, at some time in the indefinite future" (301 U. S. at 262), lead to force and violence. It is clear that this Court adopted the latter construction, and thus assumed that the statute reached one, "however peaceful his own intent" (301 U. S. at 262).

It seems clear then, both upon reason and upon authority, that a statute cannot be condemned as unconstitutionally indefinite if its sanctions apply only after scienter is established. In the present case, the statute not only requires scienter (or the substantially equivalent "reason to believe") before its penalties apply, but it offers additional limitations by which to guard against entrapment of the innocent, the facts that the revealed infor-

reasonable profit or to market at a reasonable profit those products which cannot otherwise be so marketed" (274 U.S. at 456). This statute did not punish only those with a guilty intent but all persons except those with a specified good intent (together with the additional objective factor that the products can be marketed only by combinations).

mation must be, broadly speaking, secret or confidential and must be of a military nature. The cases, then, apply a fortiori here. For this reason alone the attack upon Sections 1 (b) and 2 (a) of the Espionage Act must fail. We shall, however, deal briefly with the additional factors which corroborate this conclusion.

4. Words of Common Usage.—The term "national defense" is a part of the common speech. In common with other words of ordinary usage, it wants precision. But, as it serves to convey an adequate meaning in day-to-day communication, it serves equally when used in the statute. The House Member in charge of the bill which became the Espionage Act said of "national defense" that "Its meaning is pretty well understood in the minds of the public" (55 Cong. Rec. 1594). This Court has frequently recognized the principle that the legislature is allowed the indefiniteness of ordinary speech. In Sproles v. Binford, 286 U.S. 374, 393, it said:

The requirement of reasonable certainty does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding. \* \* The use of common experience as a glossary is necessary to meet the practical demands of legislation.

See, to the same effect, Lloyd v. Dollison, 194 U.S. 445, 450; Hunt v. State, 195 Ind. 585, 146 N. E. 329 (1925); Martin v. United States, 100 F. (2d)

490, 494 (C. C. A. 10th), certiorari denied, 306 U. S. 649; see Miller v. Oregon, 273 U. S. 657 (discussed in 274 U. S. at 464-465); cf. Cline v. Frink Dairy Co., 274 U. S. 445, 464-465; United States v. Alford, 274 U. S. 264, 267. It may be noted in this connection that "national defense" is substantially identical with "common defense," a term twice used in the Constitution. Cf. Levy Leasing Co. v. Siegel, 258 U. S. 242, 250.

5. Technical Meaning. Whatever might be thought to be the vagueness of "national defense" to the man in the street, the term receives additional content to those familiar with military, naval, or espionage work. None unfamiliar with these matters is likely to obtain and reveal confidential military information intended to be used to the injury of the United States or the advantage of a foreign nation. Certainly petitioners cannot eomplain that the statute applies to them as laymen; in a very real sense, each was in the "national defense" business. The case comes, therefore, within the rule that the words of a statute are not too indefinite if they carry a meaning which, because of their familiarity with the subject matter. is clear to those covered by the statute. Omaechevarria v. Idaho, 246 U. S. 343, 348; Hygrade Provision Co. v. Sherman, 266 U.S. 497, 502; see Connally v. General Construction Co., 269 U. S. 385, 391; Miller v. Oregon, 273 U.S. 657 (discussed 274 U. S. at 464-465); Champlin Refining Co. v. Commission, 286 U. S. 210, 242-243; cf. Bandini Co. v. Superior Court, 284 U. S. 8, 18.

Section 1 (a) of the Espionage Act enumerates some 24 places included for the purposes of that subdivision within the term "national defense." Yet, if the generic term were to be abandoned for Sections 1 (b) and 2 (a), it is evident, as we have shown, that the enumeration in Section 1 (a) would be woefully incomplete and that any satisfactory particularization would be impossible (supra, pp. 57-58). This Court has recognized that the ideal of complete specificity must yield to the practical requirements of legislation. In Miller v. Strahl, 239 U. S. 426, 434, it said:

Rules of conduct must necessarily be expressed in general terms and depend for their application upon circumstances, and circumstances vary. It may be true, as counsel says, that "men are differently constituted," some being "abject cowards, and few only are real heroes;" that the brains of some people work "rapidly and normally in the face of danger while other people lose all control over their actions." It is manifest that rules could not be prescribed to meet these varying qualities. Yet all must . be brought to judgment. And what better test could be devised than the doing of "all in one's power" as determined by the circumstances?

See, also, Bandini Co. v. Superior Court, 284 U.S. 8, 18; Miller v. Oregon, 273 U.S. 657 (discussed in 274 U. S. at 464-465); Mulkern v. State, 176 Wis. 490, 493, 187 N. W. 190 (1922).

- 7. Necessity of Prolonged Investigation.—The Court has several times emphasized that the necessity of a prolonged investigation, with an uncertain conclusion, in order to ascertain the application of a statute, contributed to its invalidity. International Harvester Co. v. Kentucky, 234 U. S. 216, 222–224; Cline v. Frink Dairy Co., 274 U. S. 445, 457; Champlin Refining Co. v. Commission, 286 U. S. 210, 243; Smith v. Cahoon, 286 U. S. 553, 564. Certainly, it requires no prolonged or complicated investigation in order to exercise ordinary judgment as to whether a given particular is included in the generic term "national defense."
- 8. Any Uncertainty Does Not Affect Legitimate Activity.—Sections 1 (b) and 2 (a) of the Espionage Act, so far as they contain indefinite prohibitions. do not stand as an in terrorem threat to legitimate activity, which although not included within the statute might be unsettled through fear of the reach of the statute. The provisions are, instead, directed only at those who obtain or reveal confidential military information to be used to the injury of the United States or the advantage of a foreign nation. (See supra, pp. 82-83.) There are, then, no considerations of policy which make it imperative to strike down the sections because of any latent indefiniteness which might otherwise terrorize innocent activity.

On several occasions this Court has explicitly recognized that the indefiniteness of the condemned statute constituted an interference with legitimate activity. International Harvester Co. v. Kentucky, 234 U. S. 216, 223-224; Yu Cong Eng v. Trinidad, 271 U. S. 500, 512-513, 525; Cline v. Frink Dairy Co., 274 U. S. 445, 465; cf. United States v. Wurzbach, 280 U. S. 396, 399. Of perhaps equal importance is the fact that almost without exception, every case which has been held by this Court to be unconstitutionally indefinite (see note 12 supra, p. 79) has restricted activities mormally considered innocent or desirable. The present case obviously falls outside this category.

9. Force of Policy Requiring Prohibition.—A related, and perhaps more general, ground for sustaining the validity of Sections 1 (a) and 2 (b) of the Espionage Act is the imperative need for prohibition of disclosure of military or naval secrets. It is unnecessary to underscore the magnitude of this consideration. It receives additional force when it is remembered that the "national-defense" could not satisfactorily be particularized in detailed language (supra, pp. 57–58), and that the statute reaches only those who act with an inten-

<sup>&</sup>lt;sup>16</sup> Viewing the free speech cases (Stromberg v. California, 283 U. S. 359; Herndon v. Lowry, 301 U. S. 242) as protecting free speech rather than opposition to government, Lanzetta v. New Jersey, 306 U. S. 451, is the only exception, and even there the Court thought the statute could arguably reach to "gangs" of workers (p. 457).

tion, or reasonable expectation, to injure the United States or aid a foreign nation by disclosure of confidential information (supra, pp. 82-83). Under such circumstances the Court should hesitate to declare the provisions invalid in order to guard against wholly theoretical doubts and uncertainties on the part of innocent persons. In Herndon v. Lowry, 301 U. S. 242, 264, it was relevant that the condemned statute restricted the important field of freedom of speech. By the same token, it is relevant that the challenged provisions of the Espionage Act punish only the obtaining and revealing of confidential information relating to the national defense with the intent or reason to believe that it will be used to the injury of the United States or the advantage of a foreign nation; it is difficult to believe that any innocent activity would be unsettled through fear of punishment under these provisions.

# IV

THE EVIDENCE SUPPORTED THE VERDICT AND THE CON-VICTION WAS PROPER UNDER THE STATUTE AND PRIN-CIPLES OF CRIMINAL PROCEDURE

There remain for discussion three subsidiary contentions or suggestions of petitioners: (a) the revealed information as a matter of law was too innocuous to permit conviction under the Espionage Act; (b) Sections 1 (b) and 2 (a) are inapplicable because it is necessary to show that the re-

vealed information will injure the United States; and (c) the court should have directed a verdict of not guilty under the conspiracy count. We think that none has merit.

### A. THE EVIDENCE SUPPORTS THE VERDICT

Petitioners urge (Br. 22, 52-53, 63-93) that the information which Salich obtained and gave to Gorin is as a matter of law too innocuous to permit their conviction. The argument does not depend upon the interpretation given "national defense" as used in Sections 1 (b) and 2 (a) of the Espionage Act, but rests upon the premise that petitioners cannot be convicted for obtaining and revealing harmless information.

This Court will not review the evidence to determine 'whether it supports the verdict (supra, p. 25). But if it were to do so, it would be plain that the judgments below should not be reversed because the revealed information was innocuous.

1. It Would Be Immaterial if the Information Were Innocuous.—Sections 1 (b) and 2 (a) of the Espionage Act contain no qualification or limitation that the revealed information must in fact be dangerous to the United States or of real value to a foreign nation. Instead, they punish whoever obtains or reveals information "with intent or

<sup>&</sup>lt;sup>1</sup> The point, at least in general terms, was adequately preserved by each petitioner in the lower courts. See R. 41–42, 46, 50–51, 57, 318–320, 323–325, 384–385, 399–401, 407, 454–455, 458–459, 464–465, 567–569 et seq., 599–601, 605–606, 641–643.

reason to believe that the information \* \* is to be used to the injury of the United States, or to the advantage of any foreign nation." The statute does not require that the injury be grave, or that the advantage be important; it does not even require that the accused should have intended an injury or advantage of any magnitude. It is sufficient, under its terms, if any injury or advantage is intended.

The necessity that an injury to the United States or an advantage to a foreign nation be intended or reasonably expected serves automatically to eliminate the danger of severe punishment for merely technical or trivial disclosures. Congress was entitled to assume that no person who obtains and reveals military information to the representative of a foreign nation with such an intent or expectation would be trafficking in wholly innocuous tidbits or inconsequential gos-And, even if that assumption should sometime prove erroneous, there is no reason why Congress should not want to punish one whose intention to injure the United States or benefit a foreign nation was frustrated only because the revealed information in fact was too unimportant to produce the contemplated injury or advantage. There is, then, no occasion to plunge into the record in order to ascertain the precise degree of injury or advantage which the revealed information would constitute.

2. The Information Was not Innocuous.—But, if that inquiry were to be made, it is evident that the jury had ample evidence to support its verdict.

We agree with the court below that "most of" the reports, from which the information was obtained and revealed, "on their face, appear innocuous, there being no way to connect them with other material which the Naval Intelligence may have, so that the importance of the reports does not appear" (R. 715). This does not mean that all of the reports were innocuous or even unimportant: (a) some of them, even on their face, contain possible sources of injury to the United States or advantage to the U. S. S. R.; and (b) the jury was entitled to assume that the information, even if innocuous on its face, would have more importance when fitted into a larger mosaic.

(a) Three of the reports from which information was obtained and revealed dealt with Japanese in the United States who were suspected of being communists. There is evidence that at least one of these reports was given Gorin so that "Gorin could contact him direct" (R. 173). Four of the reports dealt with Americans suspected of being communists.

<sup>&</sup>lt;sup>2</sup> Petitioners obviously are not warranted in calling this a concession by the court below that the reports were innocuous (see Br. 22, 52-53).

Report Nos. 833 (R. 259), 841 (R. 260), 1130 (R. 264-265). Two of the suspected communists were said to be related by marriage to Japanese naval officers (R. 260, 265).

<sup>\*</sup>Report Nos. 849 (R. 174), 889 (R. 261-262), 967 (R. 174), 1066 (R. 175, cf. R. 363). Reports Nos. 849 and 1066 apparently were intended to result in information for Salich from Gorin (R. 174, 175).

One was "a civil-service employee in the aircraft division" and a member of the naval reserve (R. 262). As to at least one of these suspected communists, "it was then up to Gorin to make a contact with her if he so desired" (R. 174). It seems evident enough that the disclosure to a representative of the U. S. S. R. of suspected communists, so that he could "contact" them directly, was in order that they might prove useful agents or sources of information for the U. S. S. R. Espionage and counterespionage may well be a common practice in international relationships, but giving this affirmative aid to a foreign nation can hardly be characterized as innocuous.

Again, nine of the reports dealt with some 21 suspected Japanese spies. One Salich thought would also work for the U.S.S.R. (R. 175). Three of the reports discussed the probable espionage activities of Japanese boats. It does not seem to us "innocuous" to reveal to a representative of the U.S.S.R. information collected by the Naval Intelligence as to espionage in this country. No foreign nation can have the same interest as the United States in keeping secret its defenses against espionage. By deliberation or by inadvertence the information given the U.S.S.R. might through its representatives be made

<sup>&</sup>lt;sup>5</sup> Report Nos. 507 (R. 281–282), 528 (R. 278–279), 548 (R. 274), 570 (R. 270–271), 973 (R. 175), 1081 (R. 269–270), 1104 (R. 268–269), 1110 (R. 266–267), 1129 (R. 265).

<sup>&</sup>lt;sup>6</sup> Report Nos. 536 (R. 275-276), 560 (R. 271-274), 1081 (R. 269-270).

known to Japan. And it is reasonable to suppose that the U. S. S. R. would find it of some advantage to know of Japanese espionage in the United States or of the adequacy of the American counterespionage against Japan. The former might suggest the extent of any Japanese espionage in the U. S. S. R., and the latter might indicate the adequacy of American defenses against any U. S. S. R. espionage.

Finally, one of the reports discussed an acid supposed to have been developed by Japan which, when placed in the sea, would corrode nearby metal; and another dealt with a fibre helmet and gloves developed in Japan which would be useful for going through barbed-wire defenses. It might possibly be to the injury of the United States or the advantage of the U. S. S. R. to have this information.

These reports alone, we submit, are sufficient to show that the revealed information was not "innocuous" but contained a real danger of injury to the United States or advantage to the U.S.S.R.

(b) Most of the reports, it is true, dealt merely with the movements, activities, and sentiments of Japanese in the United States (supra, pp. 10-11). As such they were innocuous on their face. But, even if all of the reports had been of this character, the jury was entitled to assume that they would have more importance when added to the information already possessed by the Naval Intelligence or by the U. S. S. R.

<sup>&</sup>lt;sup>7</sup> Report No. 560 (R. 271-274).

<sup>8</sup> Report No. 1132 (R. 264).

This would be a reasonable presumption from the facts. (1) The Naval Intelligence obviously thought the information sufficiently valuable to pay Salich his salary, to digest his reports, and to transmit copies to the main San Diego office. (2) Gorin, as a representative of the U. S. S. R., thought the reports sufficiently valuable to pay Salich a total of \$1,700 over a period of nine months to obtain them. Only two inferences are possible: either the reports have a significance not apparent on their face or both the Naval Intelligence and the U. S. S. R. intelligence services conduct their operations wholly without regard to any practical benefits. Of these inferences, the former is by far the more probable.

But the question is not left to inference. The record clearly establishes that Gorin assured Salich that the information might have a value beyond its apparent importance. "There was always a possibility of some local angle having to do with possible Japanese Espionage in Russia" (R. 180). "There might be an item or two which might be connected with something in which they were interested" (R. 338). "Some of this inconsequential information somewhere, somehow, might fit in some picture" (R. 365). The Japanese espionage service, Gorin explained, "had worldwide ramifications and that what they did in any other part of the world might directly or indirectly have a bearing as to what the Japanese did in their own country, namely, U. S. S. R." (R. 378-379). If Gorin and Salich thus thought the information would have value when fitted into a larger picture, they cannot complain that the jury adopted the same view.

B. THE STATUTE PUNISHES ADVANTAGE TO 4A FOREIGN NATION .WHETHER OR NOT THERE IS INJURY TO THE UNITED STATES

Petitioners urge (Br. 53-54) that they were erroneously convicted because the trial judge instructed the jury (R. 426):

it will be sufficient to satisfy the requirements of the law if, for example, the Government proves to you beyond a reasonable doubt that both Salich and Gorin had reason to believe that the information disclosed was to be used to the advantage of Russia. \* \* \*

The statute, they say, should be construed to punish only the disclosure of information with the intent that it should be used to the advantage of a foreign nation as against the United States; in other words, that the criminal intent must be to injure the United States.

1. We do not believe the question is open to petitioners, because it was not specifically presented by the petition for a writ of certiorari. The "Ques-

Petitioner Gorin adequately preserved the point in the trial court (R. 401, 403-404, 405-406, 459-460) and in this assignment of errors on appeal (R. 677, 686-687, 690, 691-692). Petitioner Salich raised the point only by implication (see R. 406, 454, 604-606). The circuit court of appeals did not discuss the contention.

tions Presented" by the petition include only the general question "whether the jury was properly instructed as to the law," the specification of errors is equally vague, and the "Reasons" are silent " (Pet. 3, 9). Review here is ordinarily "limited to the questions specifically brought forward by the petition." General Pictures Co. v. Electric Co., 304 U. S. 175, 177, 179; Connecticut Ry. Co. v. Palmer, 305 U. S. 493, 496-497. Since, however, it is not entirely clear that the rule should be applied with its full vigour against a defendant's petition in a criminal case, we shall discuss the question on its merits."

2. The language of the statute is, we think, too explicit to admit of argument as to its meaning. Sections 1 (b) and 2 (a) of the Espionage Act punish the obtaining and disclosure of national defense information "with intent or reason to believe that

The conjunction, it is true, is italicized at one point in quoting the statutory language: "intent or reason to believe that the information to be obtained is to be used to the injury of the United States or to the advantage of any foreign nation" (Pet. 10). It would, however, be difficult to extract an articulated argument from this typographical innuendo.

There is ample evidence to show that the revealed information would injure the United States as well as benefit the U. S. S. R. (see *supra*, pp. 94-98). But the jury was unequivocally instructed that either was sufficient, and it is not wholly certain that petitioners would have been convicted if the court had adopted their theory in its instructions. We therefore do not urge that the instructions, if erroneous, were not prejudicial.

the information \* \* \* is to be used to the injury of the United States, or to the advantage of any foreign nation." Plainly enough, the guilty intent may be either to injure the United States or to benefit a foreign nation.

The legislative history of this portion of the Espionage Act shows with clarity that Congress understood the phrase "or to the advantage of any foreign nation" to mean something over and above "injury to the United States."

The Defense Secrets Act of 1911 (supra, pp. 44-45) punished whoever went on the forbidden vessel or place for the purpose of obtaining national defense information "to which he is not lawfully entitled." S. 8148, introduced into the 64th Congress, retained the same limitation (Appendix B, infra, p. 11). The phrase was bitterly criticized as being without meaning. 54 Cong. Rec. 3486, 3498, 3585. Senator Cummins thought that the Section should require as an element of the crime an intent either to injure his own country or to aid or abet another country. 54 Cong. Rec. 3485, 3487, 3488, 3498, 3499.12 However, no amendment was made at this time. In the 65th Congress, H. R. 291 adopted the position urged by petitioners, and punished only obtaining and revealing information with "intent or knowledge, or reason to believe that

<sup>&</sup>lt;sup>12</sup> Senator Walsh, who also thought these terms were too broad, disagreed and thought such intention should not be an element of crime. 54 Cong. Rec. 3498–3499.

the information is to be used to the injury of the United States" (Appendix B, infrq, p. 121). See 55 Cong. Rec. 1591, 1696, 1717-1718, 1721, 1756, 1759. But S. 2, as reported by the Senate Judiciary Committee, inserted a provision which punished obtaining and revealing information "with intent or knowledge that the information is to be used to the injury of the United States, or to the advantage of any foreign nation" (Appendix B, infra, p. 116). 55 Cong. Rec. 778. This evidently reflects the views of Senator Cummins in the 64th Congress, under which aid to a foreign nation did not necessarily include injury to the United States. The Conference Committee, except for substituting the House "reason to believe" for the Senate "knowledge," accepted the Senate version. The House managers expressly explained to the House that it had adopted the Senate version (supra, p. 52). It is, accordingly, plain that the alternative intent-aid to a foreign nation-was deliberately adopted by the Congress.

One need not seek far to find persuasive reasons why Congress chose to punish obtaining and revealing national defense information "with intent or reason to believe that the information " " " is to be used " " to the advantage of any foreign nation." In 1917, as at the present time, it was not too easy to divide foreign nations into immutable categories of friendly and antagonistic

powers. The advantage of a foreign nation might not today be the injury of the United States, but yet be a real threat tomorrow. And certainly Congress could not have intended that each person with access to national-defense information be allowed to decide for himself what foreign nation could obtain the information without danger to the United States. It was, therefore, reasonable, if not imperative, to punish those who obtained and revealed the information with the intent or reason to believe that it would be used to the advantage of a foreign nation, whatever their estimate of its likelihood of injury to the United States.

C. PETITIONERS' CONVICTION ON THE CONSPIRACY COUNT NEED, NOT BE CONSIDERED

Natasha Gorin required an instructed verdict of not guilty on Count 3, the conspiracy count (Br. 23, 55). But they present no argument on this score (see Br. 55). The court below, in any event, was plainly correct in holding (R. 735-736) that it need not consider this contention since the sentences on Count 3 were the same as those on Count 2 and were to be served concurrently with those sentences. Brooks v. United States, 267 U. S. 432, 441; Pierce v. United States, 252 U. S. 239, 252; Abrams v. United States, 250 U. S. 616, 619; Evans v. United States, 153 U. S. 608; Claassen v. United States, 142 U. S. 140.

#### CONCLUSION

For the reasons set out above, it is respectfully submitted that petitioners were properly convicted and that the decision below should be affirmed.

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DECEMBER 1940,

# APPENDIX A

Espionage Act of June 15, 1917, c. 30, 40 Stat. 217 (50 U. S. C., Supp. V, Secs. 31-38):

#### TITLE I. ESPIONAGE

Section 1. That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored, under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section six of this title; or (b) whoever for the pur-(104)

pose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or (c) whoever, for the purposes aforesaid, receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts or induces or aids another to receive or obtain it, that it has been or will be obtained. taken, made or disposed of by any person contrary to the provisions of this title; or (d) whoever, lawfully or unlawfully having possession of, access to, control over, or being intrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, or note relating to the national defense, willfully communicates or transmits or attempts to communicate or transmit the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or (e) whoever, being intrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map,

mode, note, or information, relating to the national defense, through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two

years, or both.

SEC. 2. (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any. of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than

thirty years.

SEC. 3. [As amended by the Act of May. 16; 1918, c. 75, 40 Stat. 553.] Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall willfully make or convey false reports or false statements, or say or do anything except by way of bona fide and not disloyal advice to an investor or investors, with intent to obstruct the sale by the United States of bonds or other securities of the United States or the making of loans by or to the United States, and whoever, when the United States is at war, shall willfully cause or attempt to cause, or incite or attempt to incite, insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct or attempt to obstruct the recruiting or enlistment service of the United States, and whoever, when the United States is at war, shall willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval 277969-40-

forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States, or any language intended to bring the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag of the United States, or the uniform of the Army or Navy of the United States into contempt, scorn, contumely, or disrepute, or shall willfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, or to promote the cause of its enemies, or shall willfully display the flag of any foreign enemy, or shall willfully by utterance, writing, printing, publication, or language spoken, urge, incite, or advocate any curtailment of production in this country of any thing or things, product or products, necessary or essential to the prosecution of the war in which the United States may be engaged, with intent by such curtailment to cripple or hinder the United States in the prosecution of the war, and whoever shall willfully advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated, and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both: Provided, That any employee or official of the United States Government who commits any disloyal act or utters any unpatriotic or disloyal language, or who, in an abusive and violent manner criticizes the Army or Navy

or the flag of the United States shall be at once dismissed from the service. Any such employee shall be dismissed by the head of the department in which the employee may be engaged, and any such official shall be dismissed by the authority having power to appoint a successor to the dismissed official.

Sec. 4. If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this title shall be punished as provided by section thirty-seven of the Act to codify, revise, and amend the penal laws of the United States approved March fourth, nineteen hundred and nine.

SEC. 5. Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this title shall be punished by a fine of not more than \$10,000 or by imprisonment for not

more than two years, or both.

SEC. 6. The President in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title: *Provided*, That he shall determine that information with respect thereto would be prejudical to the national defense.

SEC. 7. Nothing contained in this title shall be deemed to limit the jurisdiction of the general courts-martial, military commissions, or naval courts-martial under sections thirteen hundred and forty-two, thirteen hundred and forty-three, and sixteen hundred and twenty-four of the Revised Statutes as amended.

SEC. 8. The provisions of this title shall extend to all Territories, possessions, and places subject to the jurisdiction of the United States whether or not contiguous thereto, and offenses under this title when committed upon the high seas or elsewhere within the admiralty and maritime jurisdiction of the United States and outside the territorial limits thereof shall be punishable hereunder.

SEC. 9. The Act entitled "An Act to prevent the disclosure of national defense secrets," approved March third, nineteen hundred and eleven, is hereby repealed.

## APPENDIX B

PRIOR DRAFTS OF THE BILLS WHICH BECAME THE ESPIONAGE ACT OF 1917

1. S. 8148 (64th Cong., 2d Sess.) as reported by the Judiciary Committee on February 28, 1917:

# CHAPTER I

#### **ESPIONAGE**

SEC. 1. That (a) whoever, for the purpose of obtaining information respecting the national defense to which he is not lawfully entitled, goes upon, or enters, flies over, or induces or aids another to go upon, enter, or fly over any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States, or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the

(111)

United States, or any prohibited place within the meaning of section six of this chapter: or (b) whoever, for the purpose aforesaid, and without lawful authority, copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan model, instrument, appliance, document, writing, or note of anything connected with the national defense; or (c) whoever, for the purpose aforesaid, receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reasonable ground to believe, at the time he receives or obtains. or agrees or attempts or induces or aids another to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this chapter; or (d) whoever, lawfully or unlawfully having possesion of. access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, model, instrument, appliance, note, or information relating to the national defense, willfully communicates or transmits or attempts to communicate or transmit the same to any person not lawfully entitled to receive it, or wilfully retains the same and fails to deliver it ca demand to the officer or employee of the United States entitled to receive it; or (e) whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, model, note, or information, relating to the national defense, through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted or destroyed, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment for

not more than two years, or both.

SEC. 2. (a) Whoever, having committed or attempted to commit any offense defined in the preceding section, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, temployee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, model, note, instrument appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided, That whoever shall violate the provisions of this paragraph of this section in time of war shall be ir prisoned for a term of not less than twenty years, or for life; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the

armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense or calculated to be, or which might be, directly or indirectly, useful to the enemy, shall be punished by death or by a fine of not less than one thousand dollars and by imprisonment for not more than thirty years; and (c) whoever, in time of war, in violation of regulations to be prescribed by the President, which he is hereby authorized to make and promulgate, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense calculated to be, or which might be, useful to the enemy, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than three years or by both such fine and imprisonment.

SEC. 3. That whoever, in time of war, shall directly or indirectly, cause or attempt to cause disaffection in the military or naval forces of the United States, with the intent to interfere with or prevent the success of

the armed forces of the Nation, or to promote the success of the enemies, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not less than ten years, or by both such fine and

imprisonment.

SEC. 4. If two or more persons conspire to violate the provisions of sections two or three of this chapter, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this chapter shall be punished as provided by section thirty-seven of the Act to codify, revise, and amend the penal laws of the United States approved March fourth, nineteen hundred and nine.

SEC. 5. Whoever harbors or conceals any person whom he knows or has reasonable grounds for believing or suspecting of having committed or to be about to commit an offense under this chapter, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than

two years, or both

SEC. 6. The President of the United States shall have power in time of war or in case of military necessity to designate any place other than those set forth in paragraph (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed as a prohibited place for the purposes of this chapter on the ground that information with respect thereto would be prejudicial to the national defense; he shall further have the power, on

the aforesaid ground, in time of war or in case of military necessity to designate any matter, thing, or information belonging to the Government, or contained in the records or files of any of the executive departments, or of other Government offices, as information relating to the national defense, to which no person (unless duly authorized) shall be lawfully entitled within the meaning of this chapter.

2. S. 2 (65th Cong., 1st Sess.) as reported by the Senate Judiciary Committee on April 3, 1917:

# CHAPTER II

### ESPIONAGE

SECTION 1. That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or knowledge that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, or enters, flies over, or induces or aids another to go upon, enter, or fly over any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of. the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section six of this chapter; or (b) whoever; for the purpose aforesaid, and with like intent or knowledge, copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or (c) whoever, for the purpose aforesaid, receives or obtains or agrees or attempts or induces or aids another to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reasonable ground to believe, at the time he receives or obtains, or agrees or attempts or induces or aids another to receive or obtain it, that it has been or will be obtained, taken, made or disposed of by any person contrary to the provisions of this charter; or (d) whoever, lawfully or unlawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, model, instrument, appliance, or note relating to the national defense, willfully communicates or transmits or attempts to communicate or transmit the same to any person not lawfully entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or (e) whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, model, note, or information, relating to the national defense, through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two

years, or both.

SEC. 2. (a) Whoever, having committed or attempted to commit any offense defined in the preceding section, communicates, livers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to. any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided, That whoever shall violate the provisions of this paragraph of this section in time of war shall be punished by death or by imprisonment for not less than five years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense or calculated to be, or which might be, directly or indirectly, useful to the enemy, shall be punished by death or by imprisonment for not less than thirty years; and (c) whoever, in time of war, in violation of regulations to be prescribed by the President, which he is hereby authorized to make and promulgate, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans, or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense calculated to be. or which might be, useful to the enemy, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years or by both such fine and imprisonment: Provided, That nothing in this section shall be construed to limit or restrict; nor shall and regulation herein provided for limit or restrict, any discussion, comment,

or criticism of the acts or policies of the Government or its representatives, or the publication of the same: Provided, That no discussion, comment, or criticism shall convey information prohibited under the pro-

visions of this section.

SEC. 3. Whoever in time of war shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of their enemies and whoever in time of war shall willfully cause or attempt to cause disaffection in the military or naval forces of the United States to the injury of the service or of the United States shall be punished by imprisonment for not more

than twenty years.

SEC. 4. If two or more persons conspire to violate the provisions of sections two or three of this chapter, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy. Except as above provided conspiracies to commit offenses under this chapter shall be punished as provided by section thirty-seven of the Act to codify, revise, and amend the penal laws of the United States approved March fourth, nineteen hundred and nine."

Sec. 5. Whoever harbors or conceals any person whom he knows, or has reasonable grounds for believing or suspecting of having committed or to be about to commit an offense under this chapter, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or

both.

SEC. 6. The President of the United States shall have power in time of war or in case of national emergency to designate any place other than those set forth in paragraph (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this chapter on the ground that information with respect thereto would be prejudicial to the national defense; he shall further have the power, on the aforesaid ground, in time of war or in case of national emergency to designate any matter, thing, or information belonging to the Government, or contained in the records or files of any of the executive departments, as information relating to the national defense, to which no person unless duly authorized shall be lawfully entitled within the meaning of this chapter.

3. H. R. 291 (65th Cong., 1st Sess.) as passed by the House of Representatives on May 4, 1917:

#### TITLE I

#### ESPIONAGE

Section. 1. Whoever, with intent or knowledge, or reason to believe that the information to be obtained is to be used to the injury of the United States, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, model, instrument, appliance, document, writing, code book, or signal book, connected with the national defense, or any copy thereof, or with like intent or knowledge, or reason to believe, directly or indirectly, gets or attempts to get information concerning the national defense shall, upon conviction

thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not

more than five years, or both.

SEC. 2. Whoever, with intent or knowledge, or reason to believe that it is to be used to the injury of the United States communicates, delivers, transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction, or party or military or naval force within a foreign country, whether or not recognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, any information, document, writing, code book, signal book, photograph, photographic negative, blueprint, plan, model, note, instrument, or appliance, relating to the national defense, shall, upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than twenty years, or both: Provided, That whoever violates this section in time of war shall, upon conviction thereof, be punished by imprisonment for not more than thirty years, or by death.

SEC. 3. Whoever, having possession of, access to, control over, or being entrusted with any information, document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, model, instrument, appliance, or note, belonging to, intended for, or under the control of the United States, relating to the national defense, willfully and without proper authority communicates or transmits or attempts to communicate or transmit the same to any person, or willfully retains the same and fails to deliver it on demand to the person lawfully entitled to receive it, or through gross negligence permits the same to be removed from its proper place of custody, or

delivered to anyone not lawfully entitled to receive it, or to be lost, stolen, abstracted or destroyed, shall, upon conviction thereof, be purished by a fine of not more than \$10,000 or by imprisonment for not more than five

years, or both.

SEC. 4. During any national emergency resulting from a war to which the United: States is a party, or from imminence of such war, the publishing willfully and without proper authority of any information relating to the national defense that is or may be useful to the enemy is hereby prohibited; and the President is hereby authorized to declare by proclamation the existence of such national emergency and is hereby authorized from time to time by proclamation to declare the character of such information which is or may be useful to the enemy; and in any prosecution hereunder the jury trying the cause shall determine not only whether the defendant or defendants did willfully and without proper authority publish the information relating to the national defense as set out in the indictment, but also whether such information was of such character as to be useful to the enemy: Provided. That nothing in this section shall be construed to limit or restrict any discussion. comment, or criticism upon any fact or any of the acts or policies of the Government or its representatives, or the publication of the same.

Whoever violates the foregoing provision shall upon conviction thereof be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both.

SEC. 5. Whoever in time of war willfully makes or conveys false reports or false

statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of the enemy, or whoever in time of war willfully causes or attempts to cause insubordination, disloyalty, or refusal of duty in the military or naval forces of the United States shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than twenty years, or both.

Sec. 6. If two or more persons conspire to violate sections two, four, or five, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to the conspiracy shall be punished as provided in such sections in the case of the doing of the act the accomplishment of which is the object of the conspiracy. Except as above provided conspiracies to commit offenses under this title shall be punished as provided by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine.

#### TITLE XII

#### GENERAL PROVISIONS

SEC. 1202. The term "national defense" as used herein shall include any person, place, or thing in anywise having to do with the preparation for or the consideration or execution of any military or naval plans, expeditions, orders, supplies, or warfare for the advantage, defense, or security of the United States of America.

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CHARLES ELMONE COOPLEY

IN THE

## Supreme Court of the United States

OCTOBER TERM, 1940

MIKHAIL NICHOLAS GORIN,

Petitioner,

No. 87

UNITED STATES OF AMERICA

HAFIS SALICH,

Petitioner,

No. 88

UNITED STATES OF AMERICA

#### PETITION FOR REHEARING

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## SUBJECT INDEX

Page	B
Brief Statement of Grounds 2	
Summary of the Opinion 3	} ~
Criticism of the Opinion	1
Argument.	
1. Conviction affirmed on construction of statute not applied in trial court 8	<b>.</b>
2. Opinion departs from established law 11	
3. Amendment of Espionage Act by judicial legislation15	j
Conclusion 17	
Certificate of Counsel18	
TABLE OF CASES CITED	•
Connally v. General Construction Co., 269 U. S. 385 12	7
Gorin v. U. S., 111 F(2d) 7124, 5, 9	)
Grand Trunk v. Ives, 144 U. S. 408 13	
Lanzetta v. New Jersey, 306 U. S. 4513, 7, 12, 13, 17	
Pierce v. United States, 252 U. S. 239 14	
U. S. v. Cohen Grocery Company, 255 U. S. 817, 17	>1
STATUTES CITED	
Espionage Act, Section 6 16	

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HAFIS SALICH,

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V.

No. 88

UNITED STATES OF AMERICA

#### PETITION FOR REHEARING

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners herein respectfully petition this Court for a rehearing of said cause after judgment, and represent and show to the Court as follows:

Petitioners are before the Court after certiorari granted to the Circuit Court of Appeals, for the Ninth Circuit, following judgment affirming the sentences of petitioners who were convicted of violation of the Espionage Act of June 15, 1917. The opinion of this Court was delivered on the 13th day of January, 1941, and judgment rendered affirming the judgment of the Circuit Court of Appeals.

#### BRIEF STATEMENT OF GROUNDS FOR THIS PETITION

We present the following reasons for a rehearing:

1. The conviction of petitioners has been affirmed upon a construction of the Espionage Act, and of the law applicable thereto, which was not presented by the prosecution or followed by the trial court upon the trial . of the case. A brief reexamination of the record will demonstrate that petitioners were convicted of offenses not comprehended within the scope of the Act as now defined in the opinion of this Court.

2. The Court, in its opinion, has inadvertently departed from the principles of law established in the very cases cited with approval in the present opinion. According to the present opinion, the Court has apparently sanctioned the practice of giving to a jury the power to define a crime and to interpret the meaning

of a criminal statute.

3. The opinion of the Court, in effect, amends the Espionage Act by writing into it extensions and qualifications which the Congress explicitly refused to adopt when the Act was passed. It is not to be assumed that the Court intended such judicial legislation and we submit that the result is to leave the Act so vague that

"men of common intelligence must necessarily guess at its meaning and diver as to its application", which "violates the first essential of due process of law". The opinion in this case is in exact verbal conflict with the opinion in Lanzetta v. New Jersey, 306 U. S. 451.

In view of the importance of a clear, intelligible construction of the Espionage Act in this critical time, we earnestly urge upon the Court the reconsideration of its opinion and judgment. Looking beyond the question of justice to the present petitioners, we submit that the law, as interpreted in the present opinion, will be the source of unjust treatment to countless innocent persons, and will imperil the preservation of civil liberty in a time when forces of intolerance and oppression are surging against constitutional barriers.

#### SUMMARY OF THE OPINION

In order to present the vital issues briefly, we have undertaken the following summary of the opinion of the Court, with a conscientious effort to be absolutely accurate. The opinion apparently holds:

- 1. That, the Espionage Act makes it a crime to reveal information connected with or related to "national defense" if those accused have "acted in bad faith", that is, have revealed "secret" or "guarded information".
- 2. That, information concerning "national defense" means information "referring to the military and navel establishments and the related activities of national preparedness".

tion secured is of the defined kind".

4. That, "it is not the function of the court, where reasonable men may differ, to determine whether the acts do or do not come within the ambit of the statute".

#### CRITICISM OF THE OPINION

1. We submit that the Act makes no reference to the "secret" character of information which is not to be revealed, and is devoid of any standard (as is the present opinion of the Court) as to what information is to be regarded as "secret"—except when the President establishes a standard by proclamation under the provisions of Section 6, quoted in Petitioners' Brief, footnote, p. 33. The petitioners were convicted of revealing information, very little of which, if any, could be regarded as secret.

If the case had been tried apon the construction of the law now announced by the Supreme Court, most of the evidence against petitioners would have been properly excluded. On the contrary, the trial court

<sup>&</sup>lt;sup>1</sup> The opinion of the Circuit Court of Appeals states: "Practically everything which was contained in the report appeared in a printed periodical subsequently. Other issues of the same periodical contained information of the same general nature as that contained in the reports." (Gorin v. U. S., 111 F (2d) 712, 716.)

The indictment did not charge the revelation of "secret" matter, but only "confidential" matter—two different classifications in Navy Regulations—in which "confidential matter" is specifically defined as "not endangering the national security". (Pet. Brief, p. 90.) The trial court instructed the jury: "You

actually excluded evidence offered by petitioners to show that the revealed information was public property (R. 382, 485).

The Court is in error in stating that the so-called reports "gave a detailed picture of the counter espionage work of the Naval Intelligence, drawn from its own files". No copies of reports were given by Salich to Gorin, but only some information contained in some reports. As the Circuit Court of Appeals wrote, "most of them, on their face, appear innocuous, there being no way to connect them with other material which the Naval Intelligence may have, so that the importance of the reports does not appear". (Gorie v. U. S. 111 F(2d) 712, 716.)

2. The definition of national defense made in the government brief, and incorporated in the opinion of the Court, is, in the first place, a limitation written into the statute in order to support its constitutionality. If this limitation had been applied by the trial court, the court should have instructed the jury that, as a matter of law, the information revealed did not come within the prohibitions of the Act; because, as the Circuit Court of Appeals held "none of the reports contained any information regarding the army, the navy, any

Naval Intelligence". (R. 308-311.)

<sup>(</sup>Footnote continued from page 4)

need not greatly concern yourselves as to whether information falling within the purview of this indictment and which has been introduced in evidence before you, was secret, confidential or even restricted, except possibly as an element to be considered by you in determining the intent of any defendant or defendants under the statute here involved." (R. 451.)

On instructions from the Secretary of the Navy, Lt. Claiborne declined to obey a subpoena for records that would have given "a detailed picture of the counter-espionage work of the

part thereof, their equipment, munitions, supplies or aircraft, or anything pertaining thereto". (Gorin v. U. S., supra. p. 716) In the second place, the question as to whether any particular information refers "to the military and naval establishments and the related activities of national preparedness," so that its revelation constitutes a crime, is certainly an issue of law. To leave it to the jury to determine such a question means to leave it to the jury to define a crime, a definition which will vary according to the mental attitude of each particular jury.

3. The present opinion holds that it is the function of the court to instruct the jury "as to the kind of information which is violative of the statute and of the jury to decide whether the information secured is of the defined kind". This ruling sanctions a vague definition of what may or may not be criminal by the court (as in the present case), and a final decision by the jury. This means that the jury, and not the statute, defines the crime.

4. The foregoing interpretation of the Court's opinion is emphasized by the next sentence in the opinion, wherein it is held that: "It is not the function of the court, where reasonable men may differ, to determine whether the acts do or do not come within the ambit of the statute". (Italics ours.) This apparently means that "where reasonable men may differ" as to whether it is or is not a crime to reveal certain information, the question as to what is a crime shall be submitted to the legislative decision of a jury.

With greater precision, we should say that the jury is thus authorized to decide whether it was or was not a crime to reveal the information. This is not only a legislative act, but it is ex post facto legislation—the exercise of a power forbidden to the Congress itself by the Constitution (Article I, Section 9, Clause 3). The absolutely necessary distinction between the constitutional exercise of judicial power by a jury to decide whether a crime has been committed and the unconstitutional exercise of legislative power to decide what is a crime—seems to have been overlooked in this opinion.

Such a ruling conflicts with the exact language of precedents expressly approved in the present opinion, because, under such an interpretation, the aw "fixes no immutable standard of guilt, but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it" (U. S. v. Cohen Grocery Company, 255 U. S. 81); and because "a statute which either forbids of requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law" (Lanzetta v. New Jersey, 306 U. S. 451). (Italics ours.)

We have endeavored, in the foregoing summary, to state the grounds of this petition for rehearing "briefly and distinctly"; and we respectfully submit that the issues presented justify further detailed presentation and our urgent request that the Court give to the following argument the consideration which we believe it deserves.

#### ARGUMENT

It is most respectfully urged that the opinion of the Court herein sustains the validity of the Espionage Act, as applied in this case, by establishing certain propositions which appear to be so inconsistent that they leave the law in a state of most undesirable uncertainty, and demonstrate that petitioners were improperly convicted, although the judgment of the Court sustains the convictions.

1. The Court affirmed the conviction upon a construction of the statutes involved and a theory of law not urged by the prosecution or followed by the Trial Court upon the trial of the case.

The opinion holds that the statute is not uncertain in defining an offense for the reasons: First, "the obvious delimiting words in the statute are those requiring 'intent or reason to believe that the information to be obtained is to be used to the injury of the United .States or to the advantage of any foreign nation." According to the opinion, "this requires those prosecuted to have acted in bad faith. The sanctions apply only when scienter is established." Then, the opinion establishes secrecy as the test of guilty intent, i. e., that if the information revealed is "secret", there must be a wrongful intent in revealing it, and it must be to the advantage of a foreign nation to obtain it. The opinion holds: "The evil which the statute punishes is the obtaining or furnishing of this guarded information, either to our hurt or another's gain."

The Court apparently holds that as a matter of law, the revelation of any "secret" information relating to "national defense" is a crime, and that the question as to whether the information revealed was or was not secret is a question of fact to be left to the jury. This was not, however, the question submitted to the jury,

4.

nor was the case tried by the government on the theory that the statute prohibited only the revelation of secret

information.

If the government and the Court had so construed the statute: the Court must necessarily have excluded the presentation by the government of information supposedly revealed by the defendants, which, on the contrary, had been published by "Ken" magazine in April, 1938 (R. 257, 382, 485), and information supposedly revealed by the defendants, which was commor public information, as, for example, the arrival of persons in this country, etc. (See Detailed Analysis of Reports, Pet. Brief, p. 75, and references to "Ken" magazine of April, 1939, and July, 1939, in opinion of Circuit Court of Appeals. Gorin v. U. S., supra, p. 716.) We respectfully submit that if the test of intent is revealing secret information, there was prejudicial error in permitting evidence to go to the jury, largely consisting of published information, or information easily obtained, mingled with only a small amount of information which could possibly be called "secret"—and none of which the Naval Intelligence Office classified as "secret".

It seems to be assumed by the Court, in this connection, that the files of the Naval Intelligence Service are entirely secret files, although the record shows that information in the files is classified in varying degrees as secret, confidential or restricted. (R. 256.) The record further shows that no care was taken to guard the information herein revealed, but that, on the con-

<sup>&#</sup>x27;See classification of information required under United States Navy Regulations into "Secret", "Confidential" and "Restricted", based on whether or not it endangered "national security". The regulations are cited and quoted in part in Petitioners' Brief, p. 90.

trary, copies of the reports from which the information was derived were kept in the drawer of an unlocked desk (see testimony of government's witness Yoeman, Roy Hanson (R. 111, 142, 121, 123)), to which access could be had by many persons—the desk being in a daily unlocked office which could not be described as "guarded".

Not only was the question of the "secrecy" with which the information was "guarded", not considered as an element of the crime in the trial court, or presented as an issue upon the trial, but the question was specifically withdrawn from the jury's consideration. The juxy was instructed (R. 451):

"In this trial both sides have introduced evidence having to do with the question as to whether a matter connected with the national defense be of a confidential, secret, or restricted nature. In reaching your verdict, you should bear in mind that under the statutes here involved you need not greatly concern yourselves as to whether information falling within the purview of this indictment and which has been introduced in evidence before you, was secret, confidential or even restricted, except possibly as an element to be considered by you in determining the intent of any defendant or defendants under the statutes here involved."

In brief, the issue of secrecy, which has been made vital in the opinion of the Supreme Court, was one only raised by the government in the Supreme Court, which secrecy now is made by this court an essential part of the crime defined by the Act. The convictions of the defendants are sustained upon a construction of the law which was not urged or applied in the trial court, which would have compelled different rulings upon, and the exclusion of, important evidence, and the submission to the jury of an issue not susmitted, to wit, was the information revealed "secret." in the sense of being information guarded by the government against public revelation and not in fact available to the general public. Here we have the extraordinary situation of men convicted of revealing information because it was "secret", when in fact it was widely known and published.

2. The Court, in its reasons given for affirming the conviction, departs from established principles of law and established rules of construction, and gives sanction to the practice of leaving to the jury, in a criminal case, the definition and interpretation of the meaning of a criminal statute.

The opinion sustains the validity of the Act, as construed, on the ground that the words "national defense have a well-understood connotation". The opinion agrees with the government contention that national defense "is a generic concept of broad connotations referring to the military and naval establishments, and the related activities of national preparedness". After the Court holds that the question as to whether acts of the defendants were connected with, or related to, the national defense was properly left to the jury, the opinion further holds:

"The function of the court is to instruct as to the kind of information which is violative of the statute, and of the jury to decide whether the information is of the defined kind. It is not the function of the court, where reasonable men may differ, to determine whether the acts do or do not come within the ambit of the statute."

We submit most respectfully and earnestly that according to the test laid down in the foregoing quotation, the statute must be unconstitutional under the precedents cited and approved by the Court in this opinion.

In Lanzetta v. New Jersey, 306-U. S. 451, the court quoted, with approval, the well-established rule stated in Connally v. General Construction Company, 269 U. S. 385, 391, as follows:

"And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." (Italics ours.)

Therefore, if the Court now holds that a jury is to pass upon a question "where reasonable men may differ" as to whether acts are or are not a crime, the Court has overruled one of the great safeguards of civil liberty, which, up to the present time, has been vigorously upheld.

It is for this reason particularly that we urge a reconsideration of the ruling in the present case. It is true, as the opinion of the Court points out, that

"negligence" is an issue of fact to be determined by a jury. But, negligence is the failure to exercise ordinary care, and the question submitted to the jury is whether a defendant has, by act or omission, failed to exercise ordinary care—a question depending upon common understanding of what is ordinary care—proper to be submitted to the composite opinion of a jury. Here, however, we have a new crime defined by statute—not murder or theft or assault and battery, which have well-accepted meanings, but the very uncertain crime of revealing information connected with or related to national defense. Certainly the government, in the first instance, by legislative action, should be able to define the crime.

When the question arises as to whether certain acts come within the ambit of the statute, then if the statute be clear enough to define a crime, it must be the duty of the court to instruct the jury as to whether the acts charged come within the statute, and leave it to the jury to perform its function in determining the issue of fact as to whether the proscribed acts have been committed. If the statute be construed, as it has apparently been construed by this Court, to mean that a jury is free to decide in one instance that the revelation of certain information is a crime, and in another instance, to decide that the revelation of the same information is not a crime, because "reasonable men may differ", then the terms of the penal statute are clearly not "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties". (Lanzetta v. New Jersey,

<sup>&</sup>lt;sup>2</sup> See the justification and basis for such a rule as pointed out in the case of *Grand Trunk* v. *Ives*, 144 U. S. 408,417.

supra.) We submit most earnestly that in the language of the case just cited this "well-recognized fequirement consonant alike with ordinary notions of fair play and the settled rules of law" has been abrogated by the opinion and judgment of the Court in this case.

In the case of Pierce v. United States, 252 U. S. 239, largely relied on by the Court in its opinion, the questions submitted to the jury involved deciding the effect upon the average man of distributing a given pamphlet which the government charged interfered with recruiting. But it is well to point out the vigorous dissent of Mr. Justice Brandeis, concurred in by Mr. Justice Holmes, where, in considering the point urged and under discussion here—namely the right to submit to a jury whether or not a document came within the purview of a statute—the dissenting justices said (p. 269):

"The presiding judge ruled that expressions of opinion were not punishable as false statements under the act; but he left it to the jury to determine whether the five sentences in question were statements of fact or expressions of opinion. As this determination was to be made from the reading of the leaflet, unaffected by any extrinsic evidence, the question was one for the court. To hold that a jury may make punishable statements of conclusions or of opinion, like those here involved, by declaring them to be statements of facts and to be false, would practically deny members of small political parties freedom of criticism and of discussion in times when feelings run high and the questions involved are deemed fundamental."

The Supreme Court, in the present case, has either decided that as a matter of law the acts of defendants. if proved, constituted a crime, or else has decided that the statute leaves it to a jury to determine whether their acts constituted a crime. If the first construction of the Court's opinion is correct, then the lower court erred in not holding, as a matter of law, that the acts, if proved, constituted a crime; leaving it to the jury to determine only whether the acts were proved and whether there was a guilty intent. No one can assume that if the jury had had its attention properly focused upon the issues which should have been submitted to the jury, its verdict would have been the same. If, on the other hand, the statute itself does not, or could not, constitutionally define it to be a crime to reveal any sort of information which anyone might regard as connected with or related to the national defense, then the convictions were clearly erroneous, and should have been reversed.

 The construction of the statute by the Court constitutes a form of judicial legislation by reading into the Espionage Act provisions not enacted by Congress.

Congress did not include any words in the statute indicating that the "document . . . or information relating to the national defense", the obtaining and transmitting of which is proscribed by the statute, should be of a "secret" or "guarded" nature, or kept in the files which could be termed of that character. Neither did it define national defense in the terms or language used by the Court in its opinion. The Con-

gress could have very easily and directly done so by the use of appropriate words.

On the contrary, it is significant that the Congress rejected the original provision of the House Bill which gave the President power, in time of war or national emergency, to designate as within the purview of the statute "any matter or thing or information belonging to the government or contained in the records or files of any executive department".1 Such a statutory provision at least would have given notice to all persons possibly affected that the government wanted certain information held "secret". The Congress finally granted the President only the limited power now found in Section 6 of the Espionage Act.2 The opinion of the court grants greater power to a jury to define a crime after it has been committed, than the Congress was willing to give to the President to define a crime before it has been committed.

It should also be noted that the explicit language used elsewhere in the Espionage Act (as in Section 2 (b) and Section 3) shows that the Congress intended definitely to limit the scope of the Act—particularly in time of peace—to punishing the revelation of definitely described information of obvious military value to a hostile nation—to punishing a wrongdoer who intended to injure the United States

<sup>&</sup>lt;sup>1</sup> See legislative history of Bill, Petitioner's Brief, p. 25, et seq.

<sup>&</sup>lt;sup>2</sup> Section 6 empowers the President by proclamation "in time of war or in case of national emergency" to add to the places designated in Section 1(a)—"Provided, That he shall determine that information with respect thereto would be prejudicial to the national defense". The present opinion makes this section meaningless and superfluous.

or to give a military advantage to a potential enemy.

It is respectfully submitted that to amend this statute by extensions and qualifications written into it by judicial opinion would be to indulge in judicial legislation, which is not warranted in order to sustain a conviction in any case, and which in the present instance would amount to creating a crime which the Congress itself definitely refused to create.

#### CONCLUSION

The Court itself recognized the importance of the questions here presented, in granting certiorari. The opinion of the Court evidences a clear desire to uphold the constitutional protections which have been maintained in such cases as U. S. v. Cohen Grocery Company, supra, Lanzetta v. New Jersey, supra, and other cases of similar import.

But we submit that the Court has withheld from these petitioners, and has seriously weakened for all citizens, these constitutional safeguards of civil liberty,

because-

1. The present opinion writes into the Espionage Act a limitation that illegally revealed information must be secret or guarded information. This was not the construction of the statute under which petitioners were indicted or tried.

2. The present opinion writes into the Espionage Act a dangerously broad definition of "national

defense".

3. The present opinion announces a new doctrine—that when "reasonable men may differ" as to whether an act constitutes a crime, the issue may be left to the decision of a jury.

Thus, a jury is empowered to define the same act

as a crime today and a good deed tomorrow. Upon the same state of facts, one man may be convicted by one jury and sentenced, as here, to six years penal servitude, and another man may be held by another jury to be guiltless of any crime—simply because "reasonable men may differ" as to what acts ought to be regarded as crimes and be punished. This has never been the law. It should never be made the law. We cannot believe that the Supreme Court has intended to make this the law, even in one case.

WHEREFORE, petitioners pray that a rehearing may be granted in this case and that the judgments

against them may be reversed.

Respectfully submitted,

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Attorneys for Petitioner M. N. Gorin.
HARRY GRAHAM BALTER,
Attorney for Petitioner H. Salich.

WILLARD J. STONE, JR.,

Of Counsel for Petitioner Salich.

#### CERTIFICATE OF COUNSEL

The undersigned attorneys for petitioners Mikhail Nicholas Gorin and Hafis Salich do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for delay.

Donald R. Richberg, SETH W. Richardson, Clore Warne, Attorneys for Petitioners.

## SUPREME COURT OF THE UNITED STATES.

Nos. 87, 88.—OCTOBER TERM, 1940.

Mikhail Nicholas Gorin, Petitioner,

The United States of America.

Hafis Salich, Petitioner,

88

The United States of America.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[January 13, 1941.]

Mr. Justice REED delivered the opinion of the Court.

This certiorari brings here a judgment of the Circuit Court of Appeals affirming the sentences of the two petitioners who were convicted of violation of the Espionage Act of June 15, 1917. 111 F. (2d) 712. As the affirmance turned upon a determination of the scope of the Act and its constitutionality as construed, the petition was allowed because of the testions, important in enforcing this criminal statute.

The joint indictment in three counts charged in the first count violation of section 1(b) by allegations in the words of the statute of obtaining documents "connected with the national defense"; in the second count violation of section 2(a) in delivering and inducing the delivery of these documents to the petitioner, Gorin, the agent of a foreign nation; and in the third count of section 4 by conspiracy to deliver them to a foreign government and its agent, just named. The pertinent statutory provisions appear below.<sup>1</sup> A

<sup>1</sup> Espionage Acc of June 15, 1917, c. 30, 40 Stat. 217:

<sup>&</sup>quot;Title 1. Espionage. Section 1. That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters; files over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, or any place in which any vessel, aircraft, arms, munitious, or other materials or instruments

third party, the wife of Gorin, was joined in and acquitted on all three counts. The petitioners were found guilty on each count and sentenced to various terms of imprisonment to run concurrently and fines of \$10,000 each. The longest term of Gorin is six years and of Salich four years.

The proof indicated that Gorin, a citizen of the Union of Soviet Socialist Republics, acted as its agent in gathering information. He sought and obtained from Salich for substantial pay the contents of over fifty reports relating chiefly to Japanese activities in the United States. These reports were in the files of the Naval Intelligence branch office at San Pedro, California. Salich, a naturalized, Russian-born citizen, had free access to the records as he was a civilian investigator for that office. Speaking broadly the reports

for use in time of war are being made, prepared, repaired, or stored, . . . ; or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts, or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; . . . shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both.

"Sec. 2. (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to, or aids or induces another to, communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blue print, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by imprisonment for not more than twenty years: Provided, That whoever shall violate the provisions of subsection (a) of this section in time of war shall be punished by death or by imprisonment for not more than thirty years; and (b) whoever, in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish, or communicate, or attempt to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the armed forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for not more than thirty years.

<sup>&</sup>quot;Sec. 4. If two or more persons conspire to violate the provisions of sections two or three of this title, and one or more of such persons does any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as in said sections provided in the care of the doing of the act the accomplishment of which is the object of such conspiracy..."

detailed the coming and going on the west coast of Japanese military and civil officials as well as private citizens whose actions were deemed of possible interest to the Intelligence Office. Some statements appear as to the movements of fishing boats, suspected of espionage and as to the taking of photographs of American war vessels.

Petitioners object to the convictions principally on the grounds (1) that the prohibitions of the act are limited to obtaining and delivering information concerning the specifically described places and things set out in the act, such as a vessel, aircraft, fort, signal station, code or signal book; and (2) that an interpretation which put within the statute the furnishing of any other information connected with or relating to the national defense than that concerning these specifically described places and things would make the act unconstitutional as violative of due process because of indefiniteness.

The philosophy behind the insistence that the prohibitions of sections 1(b) and 2(a), upon which the indictment is based, are limited to the places and things which are specifically set out in section 1(a) refles upon the traditional freedom of discussion of matters connected with national defense which is permitted in this country. It would require, urge petitioners, the clearest sort of declaration by the Congress to bring under the statute the obtaining and delivering to a foreign government for its advantage of reports generally published and available which deal with food production, the advances of civil aeronautics, reserves of raw materials or other similar matters not directly connected with and yet of the greatest importance to national defense. The possibility of such an interpretation of the terms "connected with" or "relating to" national defense is to be avoided by construing the act so as "to make it a crime only to obtain information as to places and things specifically listed in section 1 as connected with or related to the national defense." Petitioners argue that the statute should not be construed so as to leave to a jury to determine whether an innocuous report on a crop yield is "connected" with the national defense.

Petitioners rely upon the legislative history to support this position.<sup>2</sup> The passage of the Espionage Act<sup>3</sup> during the World War

<sup>&</sup>lt;sup>2</sup> H. R. 291, 65th Cong., 1st Sess.; Conference Report No. 69, 55 Cong. Rec. 3301.

<sup>\*</sup>Other titles such as neutrality, foreign commerce and at one time censor-ship, 55 Cong. Rec. 2097, 2102; 2109-2111; 2262; 2265; 3145; 3259; 3266; added to the difficulties.

year of 1917 attracted the close scrutiny of Congress and resulted in different bills in the two Houses which were reconciled only after a second conference report. Nothing more definite appears in this history as to the Congressional intention in regard to limiting the act's prohibitions upon which this indictment depends to the places and things in section 1(a), than that a House definition of 'mational defense" which gave it a broad meaning was stricken out4 and the conference report stated as to the final form of the present act: "Section 1 sets out the places connected with the national defense to which the prohibitions of the section apply." Neither change seems significant on this inquiry. The House bill had not specified the places under surveillance. The Conference change made them definite. The fact that the clause "or other place connected with the national defense" is also included in section 1(a) is not an unusual manner of protecting enactments against inadvertent omissions. With this specific designation of prohibited places, the broad definition of section 1202 of the House was stricken as no longer apt and, as stated in Conference Report No. 69, section 6 of the act was therefore adopted. Obviously the purpose was to give flexibility to the designated places. We see nothing in this legislative history to affect our conclusion which is drawn from the meaning of the entire act.6

An examination of the words of the statute satisfies us that the meaning of national defense in sections 1(b) and 2(a) cannot be limited to the places and things specified in section 1(a). Certainly there is no such express limitation in the later sections. Section 1(a) lays down the test of purpose and intent and then defines the crime as going upon or otherwise obtaining information as to named things and places connected with the national defense. Section 1(b) adopts the same purpose and intent of 1(a) and then defines the crime as copying, taking or picturing certain articles such as models,

<sup>4</sup> That definition read: "Section 1202. The term 'national defense' as used herein shall include any person, place, or thing in anywise having to do with the preparation for or the consideration or execution of any military or naval plans, expeditions, orders, supplies, or warfare for the advantage, defense, or security of the United States of America."

<sup>5 55</sup> Cong. Rec. 3306. Subsequent legislation relating to the protection of national defense information is not important. The act of January 12, 1938, 52 Stat. 3, is to protect against innocent disclosures. S. Rep. 108, 75th Cong., 2nd Sess.

Public No. 443, 76th Cong., 3d Sess., is merely an increase of penalties.

<sup>6</sup> Cf. United States v. American Trucking Ass'ns, 310 U. S. 534, 543.

appliances, documents, and so forth of anything connected with the national defense. None of the articles specified in 1(b) are the same as the things specified in 1(a). Apparently the draftsmen of the act first set out the places to be protected, and included in that connotation ships and planes and then in 1(b) covered much of the contents of such places in the nature of plans and documents. Section 2(a), it will be observed, covers in much the same way the delivery of these movable articles or information to a foreign nation or its agent. If a government model of a new weapon were obtained or delivered there seems to be little logic in making its transfer a crime only when it is connected in some undefined way with the places catalogued under 1(a). It is our view that it is a crime to obtain or deliver, in violation of the intent and purposes specified, the things described in sections 1(b) and 2(a) without regard to their connection with the places and things of 1(a).

In each of these sections the document or other thing protected is required also to be "connected with" or "relating to" the national defense. The sections are not simple prohibtions against obtaining or delivering to foreign powers information which a jury may consider relating to national defense. If this were the language, it would need to be tested by the inquiry as to whether it had double meaning or forced anyone, at his peril, to speculate as to whether certain actions violated the statute.8 This Court has frequently held criminal laws deemed to violate these tests invalid. United States v. Cohen Grocery Company, urged as a precedent by petitioners. points out that the statute there under consideration forbade no specific act,10 that it really punished acts "detrimental to the public interest when unjust and unreasonable" in a jury's view. In Lanzetta v. New Jersey11 the statute was equally vague. "Any person not engaged in any lawful occupation, known to be a member of any gang . . . , who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime in this or any other State, is declared to be a gangster

<sup>7</sup> United States v. Reese, 92 U. S. 214.

<sup>8</sup> Lanzetta v. New Jersey, 306 U. S. 451.

<sup>9 255</sup> U. S. 81, 89.

<sup>10 &</sup>quot;That it is hereby made unlawful for any person willfully . . . to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries." Act of October 22, 1919, c. 80, § 2, 41 Stat. 297.

<sup>11 306</sup> U. S. 451.

We there said that the statute "condemns no act or emission"; that the vagueness is such as to violate due process. 12

But we find no uncertainty in this statute which deprives a person of the ability to predetermine whether a contemplated action is criminal under the provisions of this law.<sup>13</sup> The obvious delimiting words in the statute, are those requiring "intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation." This requires those prosecuted to have acted in bad faith. The sanctions apply only when scienter is established. Where there is no occasion for secrecy, as with reports relating to national defense, published by authority of Congress or the military departments, there can, of course, in all likelihood be no reasonable intent to give an advantage to a foreign government. Finally, we are of the view that the use of the words "national defense" has given them, as here employed, a well understood connotation. They were used in the Defense Secrets Act of 1911. The traditional concept of war

<sup>12</sup> Criminal statutes deemed vague: International Harvester Co. v. Kentucky, 234 U. S. 216, 221-224 (raising prices above "market value under fair competition, and under normal market conditions"); Collins v. Kentucky, 234 U. S. 634 (same); Weeds, Inc. v. United States, 255 U. S. 109 (exacting "excessive prices for any necessaries"); Stromberg v. California, 283 U. S. 359, 369 (displaying any "symbol or emblem of opposition to organized government"); Smith v. Cahoon, 283 U. S. 553, 564-565 (such provisions regulating common carriers as could constitutionally be applied to private carriers); Herndon v. Lowry, 301 U. S. 242, 261-264 (distribution of pamphlets intended at any time in the future to lead to forcible resistance to law).

<sup>13</sup> Cf. Adequately definite criminal statutes: Lloyd v. Dollison, 194 U. S. 445, 450 (liquor restrictions varying according to sale at "wholesale" or "retail"); Waters-Pierce Oil Co. v. Texas (No. 1), 212 U. S. 86, 408-111 (contracts "reasonably calculated" or which "tend" to fix prices); Nash v. United States, 229 U. S. 373, 376-378 (unreasonable or undue restraints of trade); Omaechevarria v. Idaho, 246 U. S. 343, 345, 348 ("any cattle range previously or usually occupied by any cattle grower"); Hygrade Provision Co. v. Sherman, 266 U. S. 497, 501-593 (meat represented to be "kosher"); Miller v. Oregon, 273 U. S. 657 (dangerous rate of speed; see 274 U. S. at 464-465); United States v. Alford, 274 U. S. 264, 267 (building fires "near" any forest or inflammable material); United States v. Wurzbach, 280 U. S. 396, 399 (receiving contributions for "any political purpose whatever"); United States v. Shreveport Grain & Elevator Co., 287 U. S. 77, 81-82 ("reasonable variations" in weight or measure); Kay v. United States, 303 U. S. 1, 8-9 ("ordinary fees for services actually rendered").

<sup>14</sup> Cf. Hygrade Prevision Co. v. Sherman, 266 U. S. 497, 501.

<sup>15 36</sup> Stat. 1084: "That whoever, for the purpose of obtaining information respecting the national defense, to which he is not lawfully entitled, goes upon any vessel, or enters any navy-yard, naval station, fort, battery, torpedo station, arsenal, camp, factory, building, office, or other place connected with the national defense, owned or constructed or in process of construction by the United States ...."

as a struggle between nations is not changed by the intensity of support given to the armed forces by civilians or the extension of the combat area. National defense, the Government maintains, "is a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness." We agree that the words "national defense" in the Espionage Act carry that meaning. Whether a document or report is covered by sections 1(b) or 2(a) depends upon their relation to the national defense, as so defined, not upon their connection with places specified in section 1(a). The language employed appears sufficiently definite to apprise the public of prohibited activities and is consonant with due process.

At the conclusion of all the evidence petitioners sought a directed verdict of acquittal because (1) the innocuous character of the evidence forbade a conclusion that petitioners had intent or reason to believe that the information was to be used to the injury of the United States or the advantage of a foreign nation and (2) the evidence failed to disclose that any of the reports related to or was connected with the national defense. As a corollary to this second contention, reversal is sought on the ground that the trial court overruled the petitioners' objection that as a matter of law none of the reports dealt with national defense. That is, as the trial court stated the objection, that "the jury has no privilege in determining whether or no any of these reports have to do with the national defense, that that is a matter for the Court and not for the jury, as a matter of law."

To justify a court's refusing to permit a jury to consider a defendant's intent in obtaining and delivering these reports, one would be compelled to conclude that nothing in them could be violative of the law. As they gave a detailed picture of the counterespionage work of the Naval Intelligence, drawn from its own files, they must be considered as dealing with activities of the military forces. A foreign government in possession of this information would be in a position to use it either for itself, in following the movements of the agents reported upon, or as a check upon this country's efficiency in ferreting out foreign espionage. It could use the reports to advise the state of the persons involved of the surveillance exercised by the United States over the movements of these foreign citizens. The reports, in short, are a part of this nation's

plan for armed defense. The part relating to espionage and counterespionage cannot be viewed as separated from the whole.

Nor do we think it necessary to prove that the information obtained was to be used to the injury of the United States. The statute is explicit in phrasing the crime of espionage as an act of obtaining information relating to the national defense "to be used . . . to the advantage of any fereign nation." No distinction is made between friend or enemy. Unhappily the status of a foreign government may change. The evil which the statute punishes is the obtaining or carnishing of this guarded information, either to our hurt or another's gain. If we accept petitioners' contention that "advantage" means advantage as against the United States, it would be a useless addition, as no advantage could be given our competitor or opponent in that sense without injury to us.

An examination of the instructions convinces us that no injustice was done petitioners by their content. Weighed by the test previously outlined of relation to the military establishments, they are favorable to petitioners' contentions. A few excerpts will make this clear:

"You are instructed that the term 'national defense' includes all matters directly and reasonably connected with the defense of our nation against its enemies. . . . As you will note, the statute specifically mentions the places and things connected with or comprising the first line of defense when it mentions vessels, aircraft, works of defense, fort or battery and torpedo stations. You will note, also, that the statute specifically mentions by name certain other places or things relating to what we may call the secondary line of national defense. Thus some at least of the storage of reserves of men and materials is ordinarily done at naval stations, submarine bases, coaling stations, dock yards, arsenals and camps; all of which are specifically designated in the statute. . . . are instructed in the first place that for purposes of prosecution under these statutes, the information, documents, plans, maps, etc., connected with these places or things must directly relate to the efficiency and effectiveness of the operation of said places or things as instruments for defending our nation. . . You are instructed that in the second place the information, documents or notes must relate to those angles or phases of the instrumentality, place or thing which relates to the defense of our nation; thus if a place or thing has one use in peacetime and another use in wartime, you are to distinguish between information relating to the one or the other use. . . .

"The information, document or note might also relate to the possession of such information by another nation and as such might also

come within the possible scope of this statute. . . For from the standpoint of military or naval strategy it might not only be dangerous to us for a foreign power to know our weaknesses and our limitations, but it might also be dangerous to us when such a foreign power knows that we know that they know of our limitations.

"You are, then, to remember that the information, documents or notes, which are alleged to have been connected with the national defense, may relate or pertain to the usefulness, efficiency or availability of any of the above places, instrumentalities or things for the defense of the United States of America. The connection must not be a strained one nor an arbitrary one. The relationship must be reasonable and direct."

Petitioners' objection, however, is that after having given these instructions, the court instead of determining whether the reports were or were not connected with national defense, left this question to the jury in these words:

"Whether or not the information, obtained by any defendant in this case, concerned, regarded or was connected with the national defense is a question of fact solely for the determination of this jury, under these instructions."

These quotations show that the trial court undertook to give to the jury the tests by which they were to determine whether the acts of the petitioners were connected with or related to the national defense. We are of the opinion this was properly left to the jury. If we assume, as we must here after our earlier discussion as to the definiteness of the statute, that the words of the statute are sufficiently specific to advise the ordinary man of its scope, we think it follows that the words of the instructions give adequate definition to "connected with" or "relating to" national defense. The inquiry directed at the instructions is whether the jury is given sufficient guidance to enable it to determine whether the acts of the petitioners were within the prohibitions. These instructions set out the definition of national defense in a manner favorable and unobjectionable to petitioners. When they refer to facts connected with or related to defense, however, petitioners urge that the connection should be determined by the court. Instructions can, of course, go no farther than to say the connection must be reasonable, direct and natural. Further elaboration would not clarify. function of the court is to instruct as to the kind of information which is violative of the statute and of the jury to decide whether the information secured is of the defined kind. It is not the function of the court, where reasonable men may differ, to determine whether the acts do or do not come within the ambit of the statute. The question of the connection of the information with national defense is a question of fact to be determined by the jury as negligence upon undisputed facts is determined.<sup>16</sup>

In a trial under an indictment for violation of section 3<sup>17</sup> of this same Espionage Act, this Court had occasion to consider a similar question as to the function of the jury. A pamphlet was introduced as evidence of making false statements with the intent to cause insubordination. To the objection that the pamphlet could not legitimately be construed as tending to produce the prohibited consequences this Court said: "What interpretation ought to be placed upon the pamphlet, what would be the probable effect of distributing it in the mode adopted, and what were defendants' motives in doing this, were questions for the jury, not the court, to decide.

. . . Whether the printed words would in fact produce as a proximate result a material interference with the recruiting or enlistment service, or the operation or success of the forces of the United States, was a question for the jury to decide in view of all the circumstances of the time and considering the place and manner of distribution."

Viewing the instructions as a whole, we find no objection sufficient to justify reversal.

The Circuit Court of Appeals properly refused to consider the errors alleged with respect to the conspiracy count. 19

Affirmed.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

<sup>16</sup> Grand Trunk Ry. v. Ives, 144 U. S. 408, 417; Gunning v. Cooley, 281 U. S. 90, 94. Cf. Dunlop v. United States, 165 U. S. 486, 500-501.

<sup>17 40</sup> Stat. 217, 219, c. 30:

<sup>&</sup>quot;Sec. 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both."

<sup>18</sup> Pierce v. United States, 252 U. S. 239, 250. Justices Brandels and Holmes dissented, largely on the ground that the jury should not be left to decide whether statements in the pamphlet were facts or conclusions. Id., p. 269.

<sup>19</sup> Brooks v. United States, 267 U. S. 432, 441.